THE HISTORY OF THE REIGN OF THE EMPEROR CHARLES V.

VOL. I.

Painted by S.r Jos.a Reynolds Engraved by Jn.o Ha

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THE

HISTORY

OF THE

REIGN

OF THE

EMPEROR CHARLES V.

WITH

A VIEW of the PROGRESS of SOCIETY in EUROPE, from the Subversion of the ROMAN EMPIRE, to the Beginning of the SIXTEENTH CENTURY.

IN FOUR VOLUMES.

By WILLIAM ROBERTSON, D. D.

PRINCIPAL of the University of EDINBURGH, and HISTORIOGRAPHER to his MAJESTY for SCOTLAND.

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MDCCLXXII.

TO THE

KING.

SIR,

I PRESUME to lay before your Majesty the History of a Period, which, if the abilities of the Writer were equal to the dignity of the Subject, would not be unworthy the attention of a Monarch, who is no less a Judge than a Patron of Literary Merit.

HISTORY claims it as her prerogative to offer instruction to KINGS, as well as to their people. What reflections the Reign of the Emperor

Charles V. may ſuggeſt to Your Majeſty, it becomes not me to conjecture. But your Subjects cannot obſerve the various calamities, which that Monarch's ambition to be diſtinguiſhed as a Conqueror, brought upon his dominions, without recollecting the felicity of their own times, and looking up with gratitude to their Sovereign, who, during the fervour of youth, and amidſt the career of victory, poſſeſſed ſuch ſelf-command, and maturity of judgment, as to ſet bounds to his own triumphs, and prefer the bleſſings of peace to the ſplendour of military glory.

Posterity will not only celebrate the Wiſdom of Your Majeſty's choice, but will enumerate the many Virtues, which render Your Reign conſpicuous for a ſacred regard to all the duties

incumbent on the Sovereign of a Free People.

It is our happineſs to feel the influence of theſe Virtues; and to live under the dominion of a Prince, who delights more in promoting the Public Welfare, than in receiving the juſt Praiſe of his royal beneficence. I am,

SIR,

YOUR MAJESTY's

Moſt faithful Subject,

And moſt dutiful Servant,

WILLIAM ROBERTSON.

THE

PREFACE.

NO period in the hiſtory of one's own country can be conſidered as altogether unintereſting. Such tranſactions as tend to illuſtrate the progreſs of its conſtitution, laws, or manners, merit the utmoſt attention. Even remote and minute events are objects of a curioſity, which, being natural to the human mind, the gratification of it is attended with pleaſure.

BUT, with reſpect to the hiſtory of foreign States, we muſt ſet other bounds to our deſire of information. The univerſal progreſs of ſcience during the two laſt centuries, the art of printing, and other obvious cauſes, have filled Europe with ſuch a multiplicity of hiſtories, and with ſuch vaſt collections of hiſtorical materials, that the term of human life is too ſhort for the ſtudy or even the peruſal of them. It is neceſſary, then, not only for thoſe who are called to conduct

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the affairs of nations, but for ſuch as inquire and reaſon concerning them, to remain ſatisfied with a general knowledge of diſtant events, and to confine their ſtudy of hiſtory in detail chiefly to that period, in which the ſeveral States of Europe having become intimately connected, the operations of one power are ſo felt by all, as to influence their councils, and to regulate their meaſures.

SOME boundary, then, ought to be fixed in order to ſeparate theſe periods. An æra ſhould be pointed out, prior to which, each country, little connected with thoſe around it, may trace its own hiſtory apart; after which, the tranſactions of every conſiderable nation in Europe become intereſting and inſtructive to all. With this intention I undertook to write the hiſtory of the Emperor CHARLES V. It was during his adminiſtration that the powers of Europe were formed into one great political ſyſtem, in which each took a ſtation, wherein it has ſince remained with leſs variation, than could have been expected after the ſhocks occaſioned by ſo many internal revolutions, and

ſo

ſo many foreign wars. The great events which happened then have not hitherto ſpent their force. The political principles and maxims, then eſtabliſhed, ſtill continue to operate. The ideas concerning the balance of power, then introduced or rendered general, ſtill influence the councils of nations.

THE age of CHARLES V. may therefore be conſidered as the period at which the political ſtate of Europe began to aſſume a new form. I have endeavoured to render my account of it, an introduction to the hiſtory of Europe ſubſequent to his reign. While his numerous Biographers deſcribe his perſonal qualities and actions; while the hiſtorians of different countries relate occurrences the conſequences of which were local or tranſient, it hath been my purpoſe to record only thoſe great tranſactions in his reign, the effects of which were univerſal, or continue to be permanent.

As my readers could derive little inſtruction from ſuch a hiſtory of the reign of CHARLES V. without ſome information con-

cerning the ſtate of Europe previous to the ſixteenth century, my deſire of ſupplying this has produced a preliminary volume, in which I have attempted to point out and explain the great cauſes and events, to whoſe operation all the improvements in the political ſtate of Europe, from the ſubverſion of the Roman Empire to the beginning of the ſixteenth century, muſt be aſcribed. I have exhibited a view of the progreſs of ſociety in Europe, not only with reſpect to interior government, laws and manners, but with reſpect to the command of the national force requiſite in foreign operations; and I have deſcribed the political conſtitution of the principal ſtates in Europe at the time when Charles V. began his reign.

In this part of my work I have been led into ſeveral critical diſquiſitions, which belong more properly to the province of the lawyer or antiquary, than to that of the hiſtorian. Theſe I have placed at the end of the firſt volume, under the title of Proofs and Illuſtrations. Many of my readers will, probably,

probably, give little attention to ſuch reſearches. To ſome they may, perhaps, appear the moſt curious and intereſting part of the work. I have carefully pointed out the ſources from which I have derived information, and have cited the writers on whoſe authority I rely with a minute exactneſs, which might appear to border upon oſtentation, if it were poſſible to be vain of having read books, many of which nothing but the duty of examining with accuracy whatever I laid before the public, could have induced me to open. As my inquiries conducted me often into paths which were obſcure or little frequented, ſuch conſtant recourſe to the authors who have been my guides, was not only neceſſary for authenticating the facts which are the foundations of my reaſonings, but may be uſeful in pointing out the way to ſuch as ſhall hereafter hold the ſame courſe, and in enabling them to carry on their reſearches with greater facility and ſucceſs.

Every intelligent reader will obſerve one omiſſion in my work, the reaſon of which it

it is neceſſary to explain. I have given no account of the conqueſts of Mexico and Peru, or of the eſtabliſhment of the Spaniſh colonies in the continent and iſlands of America. The hiſtory of theſe events I originally intended to have related at conſiderable length. But upon a nearer and more attentive conſideration of this part of my plan, I found that the diſcovery of the new world; the ſtate of ſociety among its ancient inhabitants; their character, manners, and arts; the genius of the European ſettlements in its various provinces, together with the influence of theſe upon the ſyſtems of policy or commerce in Europe, were ſubjects ſo ſplendid and important, that a ſuperficial view of them could afford little ſatisfaction; to treat of them as extenſively as they merited, muſt produce an epiſode, diſproportionate to the principal work. I have therefore reſerved theſe for a ſeparate hiſtory; which, if the performance now offered to the public ſhall receive its approbation, I propoſe to undertake.

Though, by omitting ſuch conſiderable but detached articles in the reign of Charles V. I have

I have circumfcribed my narration within more narrow limits, I am yet perfuaded, from this view of the intention and nature of the work which I thought it neceffary to lay before my readers, that the plan muft ftill appear to them too extenfive, and the undertaking too arduous. I have often felt them to be fo. But my conviction of the utility of fuch a hiftory prompted me to perfevere. With what fuccefs I have executed it, the public muft now judge. I wait, in follicitude, for its decifion; to which I fhall fubmit with a refpectful filence.

DIRECTIONS to the BINDER.

Place the Head of the Author before the Title Vol. I.

The Head of Charles V. before the Title Vol. II.

——— Francis before the Title Vol. III.

Charles V. expiring, before the Title Vol. IV.

A VIEW

A VIEW OF THE PROGRESS OF SOCIETY IN EUROPE, FROM THE SUBVERSION OF THE ROMAN EMPIRE, TO THE BEGINNING OF THE SIXTEENTH CENTURY.

SECTION I.

View of the Progress of Society in Europe, with respect to interior Government, Laws and Manners.

SECT. I. The effects of the Roman power on the state of Europe.

TWO great revolutions have happened in the political state, and in the manners of the European nations. The first was occasioned by the progress of the Roman power; the second by the subversion of the Roman Empire. When the spirit of conquest led the armies of Rome beyond the Alps, they found all the countries which they invaded, inhabited by people whom they denominated barbarians, but who were never-

SECT. I. nevertheleſs brave and independent. Theſe defended their ancient poſſeſſions with obſtinate valour. It was by the ſuperiority of their diſcipline, rather than of their courage, that the Romans gained any advantage over them. A ſingle battle did not, as among the effeminate inhabitants of Aſia, decide the fate of a ſtate. The vanquiſhed people reſumed their arms with freſh ſpirit, and their undiſciplined valour, animated by the love of liberty, ſupplied the want of conduct as well as of union. During theſe long and fierce ſtruggles for dominion or independence, the countries of Europe were ſucceſſively laid waſte, a great part of their inhabitants periſhed in the field, many were carried into ſlavery, and a feeble remnant, incapable of further reſiſtance, ſubmitted to the Roman power.

The deſolation which it occaſioned.

The improvements which it introduced.

THE Romans having thus deſolated Europe, ſet themſelves to civilize it. The form of government which they eſtabliſhed in the conquered provinces, though ſevere, was regular, and preſerved public tranquillity. As a conſolation for the loſs of liberty, they communicated their arts, ſciences, language, and manners, to their new ſubjects. Europe began to breathe, and to recover ſtrength after the calamities which it had undergone; agriculture was encouraged; population increaſed; the ruined cities were rebuilt; new towns were founded; an appearance of proſperity ſucceeded, and repaired, in ſome degree, the havock of war.

THIS

Sect. I.

The bad consequences of their dominion.

This ſtate, however, was far from being happy, or favourable to the improvement of the human mind. The vanquiſhed nations were diſarmed by their conquerors, and overawed by ſoldiers kept in pay to reſtrain them. They were given up as a prey to rapacious governors, who plundered them with impunity; and were drained of their wealth by exorbitant taxes, impoſed with ſo little attention to the ſituation of the provinces, that the impoſitions were often increaſed in proportion to their inability to ſupport them. They were deprived of their moſt enterprizing citizens, who reſorted to a diſtant capital in queſt of preferment, or of riches; and were accuſtomed in all their actions to look up to a ſuperior, and tamely to receive his commands. Under all theſe depreſſing circumſtances, it was impoſſible that they could retain vigour or generoſity of mind. The martial and independent ſpirit, which had diſtinguiſhed their anceſtors, became extinct among all the people ſubjected to the Roman yoke; they loſt not only the habit but even the capacity of deciding for themſelves, or of acting from the impulſe of their own minds; and the dominion of the Romans, like that of all great Empires, degraded and debaſed the human ſpecies [A].

The irruption of the barbarous nations.

A society in this ſtate could not ſubſiſt long. There were defects in the Roman government, even in its moſt perfect form, which threatened its diſſolution. Time ripened theſe original ſeeds of

[A] NOTE I.

Sect. I. corruption, and gave birth to many new diſorders. A conſtitution, unſound, and worn out, muſt have fallen in pieces of itſelf, without any external ſhock. The violent irruption of the Goths, Vandals, Huns, and other barbarians haſtened this event, and precipitated the downfal of the Empire. New nations ſeemed to ariſe, and to ruſh from unknown regions, in order to take vengeance on the Romans for the calamities which they had inflicted on mankind. Theſe fierce tribes either inhabited the various provinces in Germany which had never been ſubdued by the Romans, or were ſcattered over the vaſt countries in the north of Europe, and north-weſt of Aſia, which are now occupied by the Danes, the Swedes, the Poles, the ſubjects of the Ruſſian Empire, and the Tartars. Their condition, and tranſactions, previous to their invaſion of the Empire, are but little known. All our information with reſpect to theſe is derived from the Romans; and as they did not penetrate far into countries which were at that time uncultivated and uninviting, the accounts of their original ſtate given by them are extremely imperfect. The rude inhabitants themſelves, deſtitute of ſcience, and of records, without leiſure, or curioſity to enquire into remote events, retained, perhaps, ſome indiſtinct memory of recent occurrences, but beyond theſe, all was buried in oblivion, or involved in darkneſs, and in fable [B].

State of the countries from which they iſſued.

The prodigious ſwarms which poured in upon the Empire from the beginning of the fourth century

[B] NOTE II.

tury

tury to the final extinction of the Roman power, have given rise to an opinion that the countries whence they issued were crowded with inhabitants; and various theories have been formed to account for such an extraordinary degree of population as hath procured these countries the appellation of The Storehouse of Nations. But if we consider, that the countries possessed by the people who invaded the Empire were of vast extent; that a great part of these was covered with woods and marshes; that some of the most considerable of the barbarous nations subsisted entirely by hunting or pasturage, in both which states of society large tracts of land are required for maintaining a few inhabitants; and that all of them were strangers to the arts, and industry, without which population cannot increase to any great degree, it is evident, that these countries could not be so populous in ancient times as they are at present, when they still continue to be less peopled than any other part of Europe or of Asia. Sect. I.

The people fit for daring enterprizes.

But if these circumstances prevented the barbarous nations from becoming populous, they contributed to inspire, or to strengthen the martial spirit by which they were distinguished. Inured by the rigour of their climate, or the poverty of their soil, to hardships, which rendered their bodies firm, and their minds vigorous; accustomed to a course of life which was a continual preparation for action; and disdaining every occupation but that of war; they undertook, and prosecuted their

SECT. I. military enterprizes with an ardour and impetuosity, of which men ſoftened by the refinements of more poliſhed times can ſcarcely form any idea [C].

The motives of their firſt excurſions.

THEIR firſt inroads into the Empire proceeded rather from the love of plunder, than from the deſire of new ſettlements. Rouſed to arms by ſome enterprizing or popular leader, they ſallied out of their foreſts; broke in upon the frontier provinces with irreſiſtible violence; put all who oppoſed them to the ſword; carried off the moſt valuable effects of the inhabitants; dragged along multitudes of captives in chains; waſted all before them with fire or ſword; and returned in triumph to their wilds and faſtneſſes. Their ſucceſs, together with the accounts which they gave of the unknown conveniencies and luxuries that abounded in countries better cultivated, or bleſſed with a milder climate than their own, excited new adventurers, and expoſed the frontier to new devaſtations.

Their reaſons for ſettling in the countries which they conquered.

WHEN nothing was left to plunder in the adjacent provinces, ravaged by frequent incurſions, they marched farther from home, and finding it difficult, or dangerous to return, they began to ſettle in the countries which they had ſubdued. The ſudden and ſhort excurſions in queſt of booty, which had alarmed and diſquieted the Empire, ceaſed; a more dreadful calamity impended. Great bodies of armed men, with their wives and

[C] NOTE III.

children, and ſlaves and flocks, iſſued forth, like regular colonies, in queſt of new ſettlements. People who had no cities, and ſeldom any fixed habitation, were ſo little attached to their native ſoil, that they migrated without reluctance from one place to another. New adventurers followed them. The lands which they deſerted were occupied by more remote tribes of barbarians. Theſe, in their turn, puſhed forward into more fertile countries, and, like a torrent continually increaſing, rolled on, and ſwept every thing before them. In leſs than two centuries from their firſt irruption, barbarians of various names and lineage, plundered and took poſſeſſion of Thrace, Pannonia, Gaul, Spain, Africa, and at laſt of Italy, and Rome itſelf. The vaſt fabrick of the Roman power, which it had been the work of ages to perfect, was in that ſhort period overturned from the foundation.

The extent of their ſettlements.

The circumſtances which occaſioned the downfal of the Roman Empire.

Many concurring cauſes prepared the way for this great revolution, and enſured ſucceſs to the nations which invaded the Empire. The Roman commonwealth had conquered the world by the wiſdom of its civil maxims, and the rigour of its military diſcipline. But, under the Emperors, the former were forgotten or deſpiſed, and the latter was gradually relaxed. The armies of the Empire in the fourth and fifth centuries bore ſcarcely any reſemblance to thoſe invincible legions which had been victorious wherever they marched. Inſtead of freemen, who voluntarily took arms from the

SECT. I. love of glory, or of their country, provincials and barbarians were bribed or forced into ſervice. They were too feeble, or too proud to ſubmit to the fatigue of military duty. They even complained of the weight of their defenſive armour, as intolerable, and laid it aſide. Infantry, from which the armies of ancient Rome derived their vigour and ſtability, fell into contempt; the effeminate and undiſciplined ſoldiers of later times could hardly be brought to venture into the field but on horſeback. Theſe wretched troops, however, were the only guardians of the Empire. The jealouſy of deſpotiſm had deprived the people of the uſe of arms; and ſubjects oppreſſed and rendered incapable of defending themſelves, had neither ſpirit nor inclination to reſiſt their invaders, from whom they had little to fear, becauſe their condition could hardly be rendered more unhappy. As the martial ſpirit became extinct, the revenues of the Empire gradually diminiſhed. The taſte for the luxuries of the Eaſt increaſed to ſuch a pitch in the Imperial court, that great ſums were carried into India, from which money never returns. By the vaſt ſubſidies paid to the barbarous nations a ſtill greater quantity of ſpecies was withdrawn from circulation. The frontier provinces waſted by frequent incurſions became unable to pay the cuſtomary tribute; and the wealth of the world, which had long centered in the capital of the Empire, ceaſed to flow thither in the ſame abundance, or was diverted into other channels. The limits of the Empire continued to be as extenſive as ever,

while

while the ſpirit requiſite for its defence declined, and its reſources were exhauſted. A vaſt body, languid, and almoſt unanimated, became incapable of any effort to ſave itſelf, and was eaſily overpowered. The Emperors, who had the abſolute direction of this diſordered ſyſtem, ſunk in the ſoftneſs of eaſtern luxury, ſhut up within the walls of a palace, ignorant of war, unacquainted with affairs, and governed entirely by women and eunuchs, or by miniſters equally effeminate, trembled at the approach of danger, and under circumſtances which called for the utmoſt vigour in counſel as well as in action, diſcovered all the impotent irreſolution of fear, and of folly. Sect. I.

In every reſpect, the condition of the barbarous nations was the reverſe of that of the Romans. Among them, the martial ſpirit was in full vigour; their leaders were hardy and enterprizing; the arts which had enervated the Romans were unknown among them; and ſuch was the nature of their military inſtitutions, that they brought forces into the field without any trouble, and ſupported them at little expence. The mercenary and effeminate troops ſtationed on the frontier, aſtoniſhed at their fierceneſs, either fled at their approach, or were routed in the firſt onſet. The feeble expedient to which the Emperors had recourſe, of taking large bodies of the barbarians into pay, and of employing them to repel new invaders, inſtead of retarding, haſtened the deſtruction of the Empire. They ſoon turned their arms againſt their maſters,

The circumſtances which contributed to the ſucceſs of the barbarous nations.

and

and with greater advantage than ever: for, by ſerving in the Roman armies, they had acquired all the diſcipline, or ſkill in war, which the Romans ſtill retained; and, upon adding theſe to their native ferocity, they became altogether irreſiſtible.

The ſpirit with which they carried on war.

BUT though from theſe, and many other cauſes, the progreſs and conqueſts of the nations which over-ran the Empire, became ſo extremely rapid, they were accompanied with horrible devaſtations, and an incredible deſtruction of the human ſpecies. Civilized nations which take arms upon cool reflection, from motives of policy or prudence, with a view to guard againſt ſome diſtant danger, or to prevent ſome remote contingency, carry on their hoſtilities with ſo little rancour, or animoſity, that war among them is diſarmed of half its terrors. Barbarians are ſtrangers to ſuch refinements. They ruſh into war with impetuoſity, and proſecute it with violence. Their ſole object is to make their enemies feel the weight of their vengeance, nor does their rage ſubſide until it be ſatiated with inflicting on them every poſſible calamity. It is with ſuch a ſpirit that the ſavage tribes in America carry on their petty wars. It was with the ſame ſpirit that the more powerful and no leſs fierce barbarians in the north of Europe, and of Aſia, fell upon the Roman Empire.

The deſolation which they brought upon Europe.

WHEREVER they marched, their rout was marked with blood. They ravaged or deſtroyed all around them. They made no diſtinction between what

was ſacred, and what was profane. They reſpected no age, or ſex, or rank. What eſcaped the fury of the firſt inundation, periſhed in thoſe which followed it. The moſt fertile and populous provinces were converted into deſerts, in which were ſcattered the ruins of villages and cities, that afforded ſhelter to a few miſerable inhabitants whom chance had preſerved, or the ſword of the enemy, wearied with deſtroying, had ſpared. The conquerors who firſt ſettled in the countries which they had waſted, were expelled or exterminated by new invaders, who coming from regions farther removed from the civilized parts of the world, were ſtill more fierce and rapacious. This brought new calamities upon mankind, which did not ceaſe until the north, by pouring forth ſucceſſive ſwarms, was drained of people, and could no longer furniſh inſtruments of deſtruction. Famine and peſtilence, which always march in the train of war, when it ravages with ſuch inconſiderate cruelty, raged in every part of Europe, and completed its ſufferings. If a man were called to fix upon the period in the hiſtory of the world, during which the condition of the human race was moſt calamitous and afflicted, he would, without heſitation, name that which elapſed from the death of Theodoſius the Great, to the eſtabliſhment of the Lombards in Italy [a]. The contemporary authors who beheld that ſcene of deſolation, labour and are at a

[a] Theodoſius died A. D. 395. the reign of Alboinus in Lombardy began A. D. 571; ſo that this period was 176 years.

loſs

SECT. I. loſs for expreſſions to deſcribe the horror of it. *The ſcourge of God*, *The deſtroyer of nations*, are the dreadful epithets by which they diſtinguiſh the moſt noted of the barbarous leaders; and they compare the ruin which they had brought on the world, to the havock occaſioned by earthquakes, conflagrations, or deluges, the moſt formidable and fatal calamities which the imagination of man can conceive.

The univerſal change which they occaſioned in the ſtate of Europe.

BUT no expreſſions can convey ſo perfect an idea of the deſtructive progreſs of the barbarians as that which muſt ſtrike an attentive obſerver, when he contemplates the total change, which he will diſcover in the ſtate of Europe after it began to recover ſome degree of tranquillity towards the cloſe of the ſixth century. The Saxons were by that time maſters of the ſouthern, and more fertile provinces of Britain; the Franks of Gaul; the Huns of Pannonia; the Goths of Spain; the Goths and Lombards of Italy and the adjacent provinces. Scarce any veſtige of the Roman policy, juriſprudence, arts, or literature, remained. New forms of government, new laws, new manners, new dreſſes, new languages, and new names of men and countries, were every where introduced. To make a great or ſudden alteration with reſpect to any of theſe, unleſs where the ancient inhabitants of a country have been almoſt totally exterminated, has proved an undertaking beyond the power of the greateſt conquerors [D]. The total change which the ſettlement of the barbarous nations occaſioned

[D] NOTE IV.

in the ſtate of Europe, may, therefore, be conſidered as a more deciſive proof, than even the teſtimony of contemporary hiſtorians, of the deſtructive violence with which theſe invaders carried on their conqueſts, and of the havock which they had made from one extremity of this quarter of the globe to the other [E].

From this ſtate of diſorder the laws of government now eſtabliſhed muſt be traced.

IN the obſcurity of the chaos occaſioned by this general wreck of nations, we muſt ſearch for the ſeeds of order, and endeavour to diſcover the firſt rudiments of the policy and laws now eſtabliſhed in Europe. To this ſource, the hiſtorians of its different kingdoms, have attempted, though with leſs attention and induſtry than the importance of the enquiry merits, to trace back the inſtitutions and cuſtoms peculiar to their countrymen. It is not my province to give a minute detail of the progreſs of government and manners in each particular nation, whoſe tranſactions are the object of the following hiſtory. But, in order to exhibit a juſt view of the ſtate of Europe at the opening of the ſixteenth century, it is neceſſary to look back, and to contemplate the condition of the northern nations upon their firſt ſettlement in thoſe countries which they occupied. It is neceſſary to mark the great ſteps by which they advanced from barbariſm to refinement, and to point out thoſe general principles and events which, by their uniform as well as extenſive operation, conducted all of them

[E] NOTE V.

SECT. I. to that degree of improvement in policy and in manners which they had attained at the period when Charles V. began his reign.

The principles on which the northern nations made their settlements in Europe.

WHEN nations ſubject to deſpotic government make conqueſts, theſe ſerve only to extend the dominion and the power of their maſter. But armies compoſed of freemen conquer for themſelves, not for their leaders. The people who overturned the Roman Empire, and ſettled in its various provinces, were of the latter claſs. Not only the different nations that iſſued from the north of Europe, which has always been conſidered as the ſeat of liberty, but the Huns and Alans who inhabited part of thoſe countries which have been marked out as the peculiar region of ſervitude [b], enjoyed freedom and independence to ſuch a high degree as ſeems to be ſcarcely compatible with a ſtate of ſocial union, or with the ſubordination neceſſary to maintain it. They followed the chieftain who led them forth in queſt of new ſettlements, not by conſtraint, but from choice; not as ſoldiers whom he could order to march, but as volunteers who offered to accompany him [F]. They conſidered their conqueſts as a common property, in which all had a title to ſhare, as all had contributed to acquire them [G]. In what manner, or by what principles, they divided among them the lands which they ſeized, we cannot now determine with any

[b] De L'eſprit des loix, liv. 17. ch. 3.

[F] NOTE VI. [G] NOTE VII.

certainty,

Sect. I.

certainty. There is no nation in Europe whoſe records reach back to this remote period; and there is little information to be got from the uninſtructive and meagre chronicles, compiled by writers ignorant of the true end, and unacquainted with the proper objects of hiſtory.

The feudal government gradually eſtabliſhed among them.

This new diviſion of property, however, together with the maxims and manners to which it gave riſe, gradually introduced a ſpecies of government formerly unknown. This ſingular inſtitution is now diſtinguiſhed by the name of the *Feudal ſyſtem*: and though the barbarous nations which framed it, ſettled in their new territories at different times, came from different countries, ſpoke various languages, and were under the command of ſeparate leaders, the Feudal policy and laws were eſtabliſhed, with little variation, in every kingdom of Europe. This amazing uniformity hath induced ſome authors[c] to believe that all theſe nations, notwithſtanding ſo many apparent circumſtances of diſtinction, were originally the ſame people. But it may be aſcribed with greater probability to the ſimilar ſtate of ſociety and of manners to which they were accuſtomed in their native countries, and to the ſimilar ſituation in which they found themſelves on taking poſſeſſion of their new domains.

As the conquerors of Europe had their acquiſitions to maintain, not only againſt ſuch of the

[c] Procop. de Bello Vandal. ap. Script. Byz. edit. Ven. vol. i. p. 345.

ancient

SECT. I. National defence the great object of feudal policy.

ancient inhabitants as they had ſpared, but againſt the more formidable inroads of new invaders, ſelf-defence was their chief care, and ſeems to have been the ſole object of their firſt inſtitutions and policy. Inſtead of thoſe looſe aſſociations, which, though they ſcarcely diminiſhed their perſonal independence, had been ſufficient for their ſecurity while they remained in their original countries, they ſaw the neceſſity of confederating more cloſely together, and of relinquiſhing ſome of their private rights in order to attain publick ſafety. Every freeman, upon receiving a portion of the lands which were divided, bound himſelf to appear in arms againſt the enemies of the community. This military ſervice was the condition upon which he received and held his lands, and as they were exempted from every other burden, that tenure, among a warlike people, was deemed both eaſy and honourable. The King or general, who led them to conqueſt, continuing ſtill to be the head of the colony, had, of courſe, the largeſt portion allotted to him. Having thus acquired the means of rewarding paſt ſervices, as well as of gaining new adherents, he parcelled out his lands with this view, binding thoſe on whom they were beſtowed, to follow his ſtandard with a number of men in proportion to the extent of the territory which they received, and to bear arms in his defence. His chief officers imitated the example of the ſovereign, and in diſtributing portions of their lands among their dependants, annexed the ſame condi-

tion to the grant. Thus a feudal kingdom resembled a military eſtabliſhment, rather than a civil inſtitution. The victorious army, cantoned out in the country which it had ſeized, continued ranged under its proper officers, and ſubordinate to military command. The names of a ſoldier and of a freeman were ſynonimous[d]. Every proprietor of land, girt with a ſword, was ready to march at the ſummons of his ſuperior, and to take the field againſt the common enemy.

SECT. I.

The feudal government defective in its proviſions for interior order in ſociety.

BUT though the Feudal policy ſeems to be ſo admirably calculated for defence againſt the aſſaults of any foreign power, its proviſions for the interior order and tranquillity of ſociety were extremely defective. The principles of diſorder and corruption are diſcernable in that conſtitution under its beſt and moſt perfect form. They ſoon unfolded themſelves, and ſpreading with rapidity through every part of the ſyſtem, produced the moſt fatal effects. The bond of political union was extremely feeble; the ſources of anarchy were innumerable. The monarchical and ariſtocratical parts of the conſtitution, having no intermediate power to balance them, were perpetually at variance, and juſtling with each other. The powerful vaſſals of the crown ſoon extorted a confirmation for life of thoſe grants of land, which being at firſt purely gratuitous, had been beſtowed only during plea-

[d] Du Cange Gloſſar. voc. *Miles.*

Sect. I. ſure. Not ſatisfied with this, they prevailed to have them converted into hereditary poſſeſſions. One ſtep more completed their uſurpations, and rendered them unalienable [H]. With an ambition no leſs enterprizing, and more prepoſterous, they appropriated to themſelves titles of honour, as well as offices of power or truſt. Theſe perſonal marks of diſtinction, which the publick admiration beſtows on illuſtrious merit, or which the publick confidence confers on extraordinary abilities, were annexed to certain families, and tranſmitted like fiefs, from father to ſon, by hereditary right. The crown vaſſals having thus ſecured the poſſeſſion of their lands and dignities, the nature of the Feudal inſtitutions, which though founded on ſubordination verged to independence, led them to new, and ſtill more dangerous encroachments on the prerogatives of the ſovereign. They obtained the power of ſupreme juriſdiction both civil and criminal within their own territories; the right of coining money; together with the privilege of carrying on war againſt their private enemies in their own name, and by their own authority. The ideas of political ſubjection were almoſt entirely loſt, and frequently ſcarce any appearance of feudal ſubordination remained. Nobles who had acquired ſuch enormous power, ſcorned to conſider themſelves as ſubjects. They aſpired openly at being independent: the bonds which connected the principal members of the conſtitution with the crown, were diſſolved. A kingdom conſiderable

[H] NOTE VIII.

in

in name and in extent, was broken into as many separate principalities as it contained powerful barons. A thousand causes of jealousy and discord subsisted among them, and gave rise to as many wars. Every country in Europe, wasted or kept in continual alarm during these endless contests, was filled with castles and places of strength, erected for the security of the inhabitants, not against foreign force, but against internal hostilities. An universal anarchy, destructive, in a great measure, of all the advantages which men expect to derive from society, prevailed. The people, the most numerous as well as the most useful part of the community, were either reduced to a state of actual servitude, or treated with the same insolence and rigour as if they had been degraded into that wretched condition [I]. The King, stripped of almost every prerogative, and without authority to enact or to execute salutary laws, could neither protect the innocent, nor punish the guilty. The nobles, superior to all restraint, harassed each other with perpetual wars, oppressed their fellow-subjects, and humbled or insulted their sovereign. To crown all, time gradually fixed, and rendered venerable this pernicious system, which violence had established.

It prevented nations likewise from acting with vigour in their external operations.

Such was the state of Europe with respect to the interior administration of government from the seventh to the eleventh century. All the external operations of its various states, during this period, were, of course, extremely feeble. A kingdom

[I] NOTE IX.

 dismem-

SECT. I. difmembered, and torn with diffention, without any common intereft to rouze, or any common head to conduct its force, was incapable of acting with vigour. Almoft all the wars in Europe, during the ages which I have mentioned, were trifling, indecifive, and productive of no confiderable event. They refembled the fhort incurfions of pirates or banditti, rather than the fteady operations of a regular army. Every baron, at the head of his vaffals, carried on fome petty enterprize, to which he was prompted by his own ambition, or revenge. The ftate itfelf, deftitute of union, either remained altogether inactive, or if it attempted to make any effort, that ferved only to difcover its impotence. The fuperior genius of Charlemagne, it is true, united all thefe disjointed and difcordant members, and forming them again into one body, reftored to government that degree of activity which diftinguifhes his reign, and renders the tranfactions of it, objects not only of attention but of admiration to more enlightened times. But this ftate of union and vigour, not being natural to the feudal government, was of fhort duration. Immediately upon his death, the fpirit which animated and fuftained the vaft fyftem which he had eftablifhed, being withdrawn, it broke into pieces. All the calamities which flow from anarchy and difcord, returning with additional force, afflicted the different kingdoms into which his Empire was fplit. From that time to the eleventh century, a fucceffion of uninterefting events; a feries of wars, the

motives

motives as well as the conſequences of which were equally unimportant, fill and deform the annals of all the nations in Europe.

SECT. I.

The fatal effects of this ſtate of ſociety on ſciences and arts;

To theſe pernicious effects of the feudal anarchy, may be added its fatal influence on the character and improvement of the human mind. If men do not enjoy the protection of regular government, together with the certainty of perſonal ſecurity, which naturally flows from it, they never attempt to make progreſs in ſcience, nor aim at attaining refinement in taſte, or in manners. That period of turbulence, oppreſſion, and rapine, which I have deſcribed, was ill ſuited to favour improvement in any of theſe. In leſs than a century after the barbarous nations ſettled in their new conqueſts, almoſt all the effects of the knowledge and civility which the Romans had ſpread through Europe diſappeared. Not only the arts of elegance which miniſter to luxury, and are ſupported by it, but many of the uſeful arts, without which life can ſcarcely be conſidered as comfortable, were neglected or loſt. Literature, ſcience, taſte, were words hardly in uſe during the ages we are contemplating; or if they occur at any time, eminence in them is aſcribed to perſons and productions ſo contemptible, that it appears their true import was little underſtood. Perſons of the higheſt rank, and in the moſt eminent ſtations, could not read or write. Many of the clergy did not underſtand the breviary which they were obliged daily

SECT. I. to recite; ſome of them could ſcarcely read it [K]. All memory of paſt tranſactions was loſt, or preſerved in annals filled with trifling events, or legendary tales. Even the codes of laws publiſhed by the ſeveral nations which eſtabliſhed themſelves in the different countries of Europe, fell into diſuſe, while, in their place, cuſtoms, vague and capricious, were ſubſtituted. The human mind neglected, uncultivated, and depreſſed, ſunk into the moſt profound ignorance. Europe did not produce, during four centuries, one author who merits to be read, either on account of the elegance of his compoſition, or the juſtneſs and novelty of his ſentiments. There is hardly one invention uſeful or ornamental to ſociety of which that long period can boaſt.

upon religion;

EVEN the Chriſtian religion, though its precepts are delivered, and its inſtitutions are fixed in ſcripture with a preciſion which ſhould have exempted them from being miſinterpreted or corrupted, degenerated during thoſe ages of darkneſs into an illiberal ſuperſtition. The barbarous nations when converted to Chriſtianity changed the object, not the ſpirit of their religious worſhip. They endeavoured to conciliate the favour of the true God by means not unlike to thoſe which they had employed in order to appeaſe their falſe deities. Inſtead of aſpiring to ſanctity and virtue, which alone can render men acceptable to the great author of

[K] NOTE X.

order

SECT. I.

order and of excellence, they imagined that they satisfied every obligation of duty by a scrupulous observance of external ceremonies [L]. Religion, according to their conception of it, comprehended nothing else; and the rites, by which they persuaded themselves that they could gain the favour of heaven, were of such a nature as might have been expected from the rude ideas of the ages which devised and introduced them. They were either so unmeaning as to be altogether unworthy of the Being to whose honour they were consecrated; or so absurd as to be a disgrace to reason and humanity [M]. Charlemagne in France, and Alfred the Great in England, endeavoured to dispel this darkness, and gave their subjects a short glimpse of light and knowledge. But the ignorance of the age was too powerful for their efforts and institutions. The darkness returned, and settled over Europe more thick and heavy than formerly.

upon the character and virtues of the human mind.

As the inhabitants of Europe during these centuries were strangers to the arts which embellish a polished age, they were destitute of the virtues which abound among people who continue in a simple state. Force of mind, a sense of personal dignity, gallantry in enterprize, invincible perseverance in execution, contempt of danger and of death, are the characteristic virtues of uncivilized nations. But these are all the offspring of equa-

[L] NOTE XI. [M] NOTE XII.

SECT. I. lity and independence, both which the feudal institutions had destroyed. The spirit of domination corrupted the nobles; the yoke of servitude depressed the people; the generous sentiments inspired by a sense of equality were extinguished, and nothing remained to be a check on ferocity and violence. Human society is in its most corrupted state at that period when men have lost their original independence and simplicity of manners, but have not attained that degree of refinement which introduces a sense of decorum and of propriety in conduct, as a restraint on those passions which lead to heinous crimes. Accordingly, a greater number of those atrocious actions which fill the mind of man with astonishment and horror, occur in the history of the centuries under review, than in that of any period of the same extent in the annals of Europe. If we open the history of Gregory of Tours, or of any contemporary author, we meet with a series of deeds of cruelty, perfidy, and revenge, so wild and enormous as almost to exceed belief.

From the beginning of the eleventh century government and manners begin to improve.

BUT, according to the observation of an elegant and profound historian [e], there is an ultimate point of depression, as well as of exaltation, from which human affairs naturally return in a contrary progress, and beyond which they seldom pass either in their advancement or decline. When defects, either in the form, or in the administration

[e] Hume's History of England, vol. ii. p. 441.

of

of government, occaſion ſuch diſorders in ſociety as are exceſſive and intolerable, it becomes the common intereſt to diſcover and to apply ſuch remedies as will moſt effectually remove them. Slight inconveniencies may be long overlooked or endured, but when abuſes grow to a certain pitch, the ſociety muſt go to ruin, or muſt attempt to reform them. The diſorders in the feudal ſyſtem, together with the corruption of taſte and manners conſequent upon theſe, which had gone on increaſing during a long courſe of years, ſeem to have attained their utmoſt point of exceſs towards the cloſe of the eleventh century. From that æra, we may date the return of government and manners in a contrary direction, and can trace a ſucceſſion of cauſes and events which contributed, ſome with a nearer and more powerful, others with a more remote and leſs perceptible influence, to aboliſh confuſion and barbariſm, and to introduce order, regularity, and refinement.

Neceſſary to point out the cauſes and events which contribute towards this improvement.

IN pointing out and explaining theſe cauſes and events, it is not neceſſary to obſerve the order of time with a chronological accuracy; it is of more importance to keep in view their mutual connection and dependence, and to ſhow how the operation of one event, or one cauſe, prepared the way for another, and augmented its influence. We have hitherto been contemplating the progreſs of that darkneſs which ſpread over Europe from its firſt approach, to the period of greateſt obſcuration; a more pleaſant exerciſe begins here, to obſerve

SECT I. ſerve the firſt dawnings of returning light, to mark the various acceſſions by which it gradually increaſed and advanced towards the full ſplendor of day.

The tendency of the Cruſades to introduce a change in government and manners.

The more remote cauſes of theſe expeditions.

I. THE Cruſades, or expeditions in order to reſcue the Holy Land out of the hands of Infidels, ſeem to be the firſt event that rouzed Europe from the lethargy in which it had been long ſunk, and that tended to introduce any change in government, or in manners. It is natural to the human mind to view thoſe places which have been diſtinguiſhed by being the reſidence of any illuſtrious perſonage, or the ſcene of any great tranſaction, with ſome degree of delight and veneration. From this principle flowed the ſuperſtitious devotion with which Chriſtians, from the earlieſt ages of the church, were accuſtomed to viſit that country which the Almighty had ſelected as the inheritance of his favourite people, and in which the ſon of God had accompliſhed the redemption of mankind. As this diſtant pilgrimage could not be performed without conſiderable expence, fatigue, and danger, it appeared the more meritorious, and came to be conſidered as an expiation for almoſt every crime. An opinion which ſpread with rapidity over Europe about the cloſe of the tenth and beginning of the eleventh century, and which gained univerſal credit, wonderfully augmented the number of theſe credulous pilgrims, and increaſed the ardour with which they undertook this uſeleſs voyage. The thouſand years mentioned by

St.

St. John[f] were supposed to be accomplished, and the end of the world to be at hand. A general consternation seized mankind; many relinquished their possessions; and abandoning their friends and families, hurried with precipitation to the Holy Land, where they imagined that Christ would quickly appear to judge the world[g]. While Palestine continued subject to the Caliphs, they had encouraged the resort of pilgrims to Jerusalem; and considered this as a beneficial species of commerce, which brought into their dominions gold and silver, and carried nothing out of them but relicks and consecrated trinkets. But the Turks having conquered Syria about the middle of the eleventh century, pilgrims were exposed to outrages of every kind from these fierce barbarians[h]. This change happening precisely at the juncture when the panic terror which I have mentioned rendered pilgrimages most frequent, filled Europe with alarm and indignation. Every person who returned from Palestine related the dangers which he had encountered, in visiting the holy city, and described with exaggeration the cruelty and vexations of the Turks.

[f] Revel. xx. 2, 3, 4.

[g] Chronic. Will. Godelli ap. Bouquet Recueil des Historiens de France. tom. x. p. 262. Vita Abbonis, ibid. p. 332. Chronic. S. Pantaleonis ap. Eccard. Corp. Script. medii ævi, vol. i. p. 909 Annalista Saxo, ibid. 576.

[h] Jo. Dan. Schoepflini de sacris Gallorum in orientem expeditionibus, p. 4. Argent. 1726. 4to.

WHEN

Sect. I.

The immediate occasion of them.

When the minds of men were thus prepared, the zeal of a fanatical monk, who conceived the idea of leading all the forces of Christendom against the infidels, and of driving them out of the Holy Land by violence, was sufficient to give a beginning to that wild enterprize. Peter the hermit, for that was the name of this martial apostle, run from province to province with a crucifix in his hand, exciting Princes and people to this Holy war, and wherever he came kindled the same enthusiastic ardour for it with which he himself was animated. The council of Placentia, where upwards of thirty thousand persons were assembled, pronounced the scheme to have been suggested by the immediate inspiration of heaven. In the council of Clermont, still more numerous, as soon as the measure was proposed, all cried out with one voice, "It is the "will of God." Persons of all ranks were smitten with the contagion; not only the gallant nobles of that age, with their martial followers, whom the boldness of a romantic enterprize might have been apt to allure, but men in the more humble and pacific stations of life; ecclesiastics of every order, and even women and children, engaged with emulation in an undertaking which was deemed sacred and meritorious. If we may believe the concurring testimony of contemporary authors, six millions of persons assumed the cross[i], which was the badge that distinguished such as devoted themselves to this holy warfare. All Europe, says the

[i] Fulcherius Carnotensis ap. Bongarsii Gesta Dei per Francos, vol. i. 387. edit. Han. 1611.

Princess Anna Comnena, torn up from the foundation, seemed ready to precipitate itself in one united body upon Asia[k]. Nor did the fumes of this enthusiastic zeal evaporate at once: the frenzy was as lasting, as it was extravagant. During two centuries, Europe seems to have had no object but to recover, or keep possession of the Holy Land, and through that period vast armies continued to march thither [N]. SECT. I.

THE first efforts of valour animated by enthusiasm were irresistible; part of the lesser Asia, all Syria and Palestine were wrested from the infidels; the banner of the cross was displayed on Mount Sion; Constantinople, the capital of the Christian empire in the East, was seized by a body of these adventurers, who had taken arms against the Mahometans, and an Earl of Flanders, and his descendants, kept possession of the Imperial throne during half a century. But though the first impression of the Crusaders was so unexpected that they made their conquests with great ease, they found infinite difficulty in preserving them. Establishments so distant from Europe, surrounded by warlike nations, animated with fanatical zeal scarcely inferior to that of the Crusaders themselves, were perpetually in danger of being overturned. Before the expiration of the thirteenth century, the Christians were driven out of all their Asiatic possessions, in acquiring of which incredible numbers of men had perished,

The success of the Crusades.

A. D. 1291.

[k] Alexias. lib. x. ap. Byz. script. vol. xi. p. 224.

[N] NOTE XIII.

SECT. I. perished, and immense sums of money had been wasted. The only common enterprize in which the European nations ever engaged, and which all undertook with equal ardour, remains a singular monument of human folly.

The beneficial effects of the Crusades on manners.

But from these expeditions, extravagant as they were, beneficial consequences followed, which had neither been foreseen nor expected. In their progress towards the Holy Land, the followers of the cross marched through countries better cultivated, and more civilized than their own. Their first rendezvous was commonly in Italy, in which Venice, Genoa, Pisa and other cities had begun to apply themselves to commerce, and had made some advances towards wealth as well as refinement. They embarked there, and landing in Dalmatia, pursued their rout by land to Constantinople. Though the military spirit had been long extinct in the eastern Empire, and a despotism of the worst species had annihilated almost every publick virtue, yet Constantinople, having never felt the destructive rage of the barbarous nations, was the greatest, as well as the most beautiful city in Europe, and the only one in which there remained any image of the ancient elegance in manners and arts. The naval power of the eastern Empire was considerable. Manufactures of the most curious fabrick were carried on in its dominions. Constantinople was the only mart in Europe for the commodities of the East Indies. Although the Saracens and Turks had torn from the Empire many of its richest provinces,

vinces, and had reduced it within very narrow bounds, yet great wealth flowed into the capital from these various sources, which not only cherished such a taste for magnificence, but kept alive such a relish for the sciences as appears considerable when compared with what was known in other parts of Europe. Even in Asia, the Europeans who had assumed the cross, found the remains of the knowledge and arts which the example and encouragement of the Caliphs had diffused through their Empire. Although the attention of the historians of the Crusades was fixed on other objects than the state of society and manners among the nations which they invaded, although most of them had neither taste nor discernment enough to describe these, they relate, however, such signal acts of humanity and generosity in the conduct of Saladin, as well as some other leaders of the Mahometans, as give us a very high idea of their manners. It was not possible for the Crusaders to travel through so many countries, and to behold their various customs and institutions, without acquiring information and improvement. Their views enlarged; their prejudices wore off; new ideas crowded into their minds; and they must have been sensible on many occasions of the rusticity of their own manners when compared with those of a more polished people. These impressions were not no slight as to be effaced upon their return to their native countries. A close intercourse subsisted between the East and West during two centuries; new armies were continually marching from Eu-

SECT. I.

SECT. I. rope to Asia, while former adventurers returned home and imported many of the customs to which they had been familiarized by a long residence abroad. Accordingly, we discover, soon after the commencement of the Crusades, greater splendour in the courts of Princes, greater pomp in publick ceremonies, a more refined taste in pleasure and amusements, together with a more romantic spirit of enterprize spreading gradually over Europe; and to these wild expeditions, the effect of superstition or folly, we owe the first gleams of light which tended to dispel barbarity and ignorance.

Their influence on the state of property.

BUT these beneficial consequences of the Crusades took place slowly; their influence upon the state of property, and consequently of power, in the different kingdoms of Europe, was more immediate as well as discernible. The nobles who assumed the cross, and bound themselves to march to the Holy Land, soon perceived that great sums were necessary towards defraying the expence of such a distant expedition, and enabling them to appear with suitable dignity at the head of their vassals. But the genius of the feudal system was averse to the imposition of extraordinary taxes; and subjects in that age were unaccustomed to pay them. No expedient remained for levying the sums requisite, but the sale of their possessions. As men were inflamed with romantic expectations of the splendid conquests which they hoped to make in Asia, and possessed with such zeal for recovering the

Holy

Holy Land as ſwallowed up every other paſſion, they relinquiſhed their ancient inheritances without any reluctance, and for prices far below their value, that they might ſally forth as adventurers in queſt of new ſettlements in unknown countries. The Monarchs of the different kingdoms, none of whom had engaged in the firſt Cruſade, eagerly ſeized this opportunity of annexing conſiderable territories to their crowns at ſmall expence[1]. Beſides this, ſeveral great barons who periſhed in the Holy war, having left no heirs, their fiefs reverted of courſe to their reſpective ſovereigns; and by theſe acceſſions of property as well as power taken from the one ſcale and thrown into the other, the regal authority increaſed in proportion as that of the Ariſtocracy declined. The abſence, too, of many potent vaſſals, accuſtomed to controul and give law to their ſovereigns, afforded them an opportunity of extending their prerogative, and of acquiring a degree of weight in the conſtitution which they did not formerly poſſeſs. To theſe circumſtances, we may add, that as all who aſſumed the croſs were taken under the immediate protection of the church, and its heavieſt anathemas were denounced againſt ſuch as ſhould diſquiet or annoy thoſe who had devoted themſelves to this ſervice; the private quarrels and hoſtilities which baniſhed tranquillity from a feudal kingdom were ſuſpended or extinguiſhed; a more general and ſteady adminiſtration

SECT. I.

[1] Willelm. Malmſbur. Guibert. Abbaſ. ap. Bongarſ. vol. i. 481.

SECT. I.

of juſtice began to be introduced, and ſome advances were made towards the eſtabliſhment of regular government in the ſeveral kingdoms of Europe [m] [O].

Their commercial effect.

THE commercial effects of the Cruſades were not leſs conſiderable than thoſe which I have already mentioned. The firſt armies under the ſtandard of the croſs, which Peter the hermit and Godfrey of Bouillon let through Germany and Hungary to Conſtantinople, ſuffered ſo much by the length of the march, as well as by the fierceneſs of the barbarous people who inhabited thoſe countries, that it deterred others from taking the ſame route; ſo that rather than encounter ſo many dangers, they choſe to go by ſea. Venice, Genoa, and Piſa furniſhed the tranſports on which they embarked. The ſum which theſe cities received merely for freight from ſuch numerous armies was immenſe [n]. This, however, was but a ſmall part of what they gained by the expeditions to the Holy Land; the Cruſaders contracted with them for military ſtores and proviſions; their fleets kept on the coaſt as the armies advanced by land; and ſupplying them with whatever was wanting, engroſſed all the profits of that lucrative branch of commerce. The ſucceſs which attended the arms of the Cruſaders was productive of advantages

[m] Du Cange Gloſſar. voc. *Cruce ſignatus.* Guil. Abbas ap. Bongarſ. vol. i. 480, 482.

[O] NOTE XIV.

[n] Muratori Antiquit. Italic. medii ævi, vol. ii. 905.

ſtill

ſtill more permanent. There are charters yet extant, containing grants to the Venetians, Piſans, and Genoeſe of the moſt extenſive immunities in the ſeveral ſettlements which the Chriſtians made in Aſia. All the commodities which they imported or exported are thereby exempted from every impoſition; the property of entire ſuburbs in ſome of the maritime towns, and of large ſtreets and houſes in others, is veſted in them; and all queſtions ariſing among perſons ſettled within their precincts, or who traded under their protection, are appointed to be tried by their own laws and by judges of their own appointment[o]. When the Cruſaders ſeized Conſtantinople, and placed one of their own leaders on the Imperial throne, the Italian States were likewiſe gainers by that event. The Venetians who had planned the enterprize, and took a conſiderable part in carrying it into execution, did not neglect to ſecure to themſelves the chief advantages redounding from its ſucceſs. They made themſelves maſters of part of the ancient Peleponneſus in Greece, together with ſome of the moſt fertile iſlands in the Archipelago. Many valuable branches of the commerce, which formerly centered in Conſtantinople, were tranſferred to Venice, Genoa, or Piſa. Thus a ſucceſſion of events occaſioned by the Holy war, opened various ſources, from which wealth flowed in ſuch

[o] Muratori Antiquit. Italic. medii ævi, vol. ii. 906, &c.

SECT. I. abundance in these cities[p], as enabled them, in concurrence with another institution which shall be immediately mentioned, to secure their own liberty and independence.

The establishment of communities favourable to government and order.

II. THE institution to which I alluded was the forming of cities into communities, corporations, or bodies politick, and granting them the privilege of municipal jurisdiction, which contributed more, perhaps, than any other cause to introduce regular government, police and arts, and to diffuse them over Europe. The feudal government had degenerated into a system of oppression. The usurpations of the nobles were become unbounded and intolerable: they had reduced the great body of the people into a state of actual servitude: the condition of those dignified with the name of freemen, was often little preferable to that of the other. Nor was such oppression the portion of those alone who dwelt in the country, and were employed in cultivating the estate of their master. Cities and villages held of some great lord, on whom they depended for protection, and were no less subject to his arbitrary jurisdiction. The inhabitants were deprived of the natural, and most unalienable rights of humanity. They could not dispose of the effects which their own industry had acquired, either by a latter will, or by any deed executed during

The ancient state of cities.

[p] Villehardouin hist. de Constant. sous l'Empereurs Francois, 105, &c.

their life[q]. They had no right to appoint guardians for their children, during their minority. They were not permitted to marry without purchasing the consent of the lord on whom they depended[r]. If once they had commenced a law-suit, they durst not terminate it by an accommodation, because that would have deprived the lord in whose court they pleaded, of the perquisites due to him on passing sentence[s]. Services of various kinds, no less disgraceful than oppressive, were exacted from them without mercy or moderation. The spirit of industry was checked in some cities by absurd regulations, and in others by unreasonable exactions: nor would the narrow and oppressive maxims of a military aristocracy have permitted it ever to rise to any degree of height or vigour[t].

The freedom of cities first established in Italy.

BUT as soon as the cities of Italy began to turn their attention towards commerce, and to conceive some idea of the advantages which they might derive from it, they became impatient to shake off the yoke of their insolent lords, and to establish among themselves such a free and equal govern-

[q] Dacherii Spiceleg. tom. xi. 374, 375. edit. in 4to. Ordonances des Rois de France, tom. iii. 204. N°. 2. 6.

[r] Ordonances des Rois de France, tom. i. p. 22. tom. iii. 203. N°. 1. Murat. Antiq. Ital. vol. iv. p. 20. Dacher. Spicel. vol. xi. 325, 341.

[s] Dacher. Spicel. vol. ix. 182.

[t] M. l'Abbè Mably observat. sur l'hist de France, tom. ii. p. 2. 96.

 ment

SECT. I. ment as would render property ſecure, and induſtry flouriſhing. The German Emperors, eſpecially thoſe of the Franconian and Suabian lines, as the ſeat of their government was far diſtant from Italy, poſſeſſed a feeble and imperfect juriſdiction in that country. Their perpetual quarrels either with the Popes or with their own turbulent vaſſals, diverted their attention from the interior police of Italy, and gave conſtant employment to their arms. Theſe circumſtances encouraged the inhabitants of ſome of the Italian cities, towards the beginning of the eleventh century, to aſſume new privileges, to unite together more cloſely, and to form themſelves into bodies politick governed by laws eſtabliſhed by common conſent[u]. The rights, which many cities acquired by bold or fortunate uſurpations, others purchaſed from the Emperors, who deemed themſelves gainers when they received large ſums for immunities which they were no longer able to withhold; and ſome cities obtained them gratuitouſly from the generoſity or facility of the Princes on whom they depended. The great increaſe of wealth which the Cruſades brought into Italy, occaſioned a new kind of fermentation and activity in the minds of the people, and excited ſuch a general paſſion for liberty and independence, that before the concluſion of the laſt Cruſade, all the conſiderable cities in that country had either purchaſed or had extorted large immunities from the Emperors [P].

[u] Murat. Antiquit. Ital. vol. iv. p. 5.

[P] NOTE XV.

THIS

SECT. I.

Is introduced into France and into other countries of Europe. A. D. 1108—1137.

THIS innovation was not long known in Italy before it made its way into France. Louis the Groſs, in order to create ſome power that might counterbalance thoſe potent vaſſals who controuled, or gave law to the crown, firſt adopted the plan of conferring new privileges on the towns ſituated within his own domaine. Theſe privileges were called *charters of community*, by which he enfranchiſed the inhabitants, aboliſhed all marks of ſervitude, and formed them into corporations or bodies politick, to be governed by a council and magiſtrates of their own nomination. Theſe magiſtrates had the right of adminiſtering juſtice within their own precincts, of levying taxes, of embodying and training to arms the militia of the town, which took the field when required by the ſovereign, under the command of officers appointed by the community. The great barons imitated the example of their monarch, and granted like immunities to the towns within their territories. They had waſted ſuch great ſums in their expeditions to the Holy Land, that they were eager to lay hold on this new expedient for raiſing money, by the ſale of theſe charters of liberty. Though the inſtitution of communities was as repugnant to their maxims of policy, as it was adverſe to their power, they diſregarded remote conſequences, in order to obtain preſent relief. In leſs than two centuries, ſervitude was aboliſhed in moſt of the towns in France, and they became free corporations, inſtead of dependent villages, without juriſdiction or pri-

 vileges.

SECT. I. vileges [Q]. Much about the ſame period, the great cities in Germany began to acquire like immunities, and laid the foundation of their preſent liberty and independence [R]. The practice ſpread quickly over Europe, and was adopted in Germany, Spain, England, Scotland, and all the other feudal kingdoms [S].

Its happy effects upon the condition of the inhabitants;

THE good effects of this new inſtitution were immediately felt, and its influence on government as well as manners was no leſs extenſive than ſalutary. A great body of the people was releaſed from ſervitude, and from all the arbitrary and grievous impoſitions to which that wretched condition had ſubjected them. Towns, upon acquiring the right of community, became ſo many little republicks, governed by known and equal laws; and liberty was deemed ſuch an eſſential and characteriſtic part in their conſtitution, that if any ſlave took refuge in one of them, and reſided there during a year without being claimed, he was inſtantly declared a freeman, and admitted as a member of the community [w].

Upon the power of the nobility;

As one part of the people owed their liberty to the erection of communities, another was indebted to them for their ſecurity. Such had been the ſtate of Europe during ſeveral centuries, that ſelf-

[Q] NOTE XVI. [R] NOTE XVII.
[S] NOTE XVIII.

[w] Statut. Humberti Bellojoci Dacher. Spicel. vol. ix. 182, 185. Charta Comit. Forenſ. ibid. 193.

preſervation

preſervation obliged every man to court the patronage of ſome powerful baron, and in times of danger his caſtle was the place to which all reſorted for ſafety. But towns ſurrounded with walls, whoſe inhabitants were regularly trained to arms, and bound by intereſt, as well by the moſt ſolemn engagements, reciprocally to defend each other, afforded a more commodious and ſecure retreat. The nobles began to be conſidered as of leſs importance, when they ceaſed to be the ſole guardians to whom the people could look up for protection againſt violence.

Upon the power of the crown;

If the nobility ſuffered ſome diminution of their credit and power by the privileges granted to the cities, the crown acquired an increaſe of both. As there were no regular troops kept on foot in any of the feudal kingdoms, the Monarch could bring no army into the field but what was compoſed of ſoldiers furniſhed by the crown-vaſſals, always jealous of the regal authority; nor had he any funds for carrying on the publick ſervice, but ſuch as they granted him with a very ſparing hand. But when the members of communities were permitted to bear arms, and were trained to the uſe of theſe, this in ſome degree ſupplied the firſt defect, and gave the crown the command of a body of men, independent of its great vaſſals. The attachment of the cities to their ſovereigns, whom they reſpected as the firſt authors of their liberties, and whom they were obliged to court as the protectors

of

SECT. I.

of their immunities against the domineering spirit of the nobles, contributed somewhat towards removing the second evil, as, on many occasions, it procured the crown such supplies of money as added new force to government [x].

Upon the increase of industry.

THE acquisition of liberty made such a happy change in the condition of all the members of communities, as roused them from that stupidity and inaction into which they had been sunk by the wretchedness of their former state. The spirit of industry revived. Commerce became an object of attention, and began to flourish. Population increased. Independence was established; and wealth flowed into cities which had long been the seat of poverty and oppression. Wealth was accompanied by its usual attendants, ostentation and luxury; and though the former was inelegant and cumbersome, and the latter indelicate, they led gradually to greater refinement in manners, and in the habits of life. Together with this improvement in manners, a more regular species of government and police was introduced. As cities grew to be more populous, and the occasions of intercourse among men increased, statutes and regulations multiplied of course, and all became sensible that their common safety depended on observing them with exactness, and on punishing such as violated them, with promptitude and rigour. Laws and subordi-

[x] Ordon. des Rois de France, tom. i. 602, 785, tom. ii. 318. 422.

nation,

nation, as well as poliſhed manners, took their riſe in cities, and diffuſed themſelves inſenſibly through the reſt of the ſociety.

The inhabitants of cities acquire political power as members of the conſtitution.

III. The inhabitants of cities having obtained perſonal freedom and municipal juriſdiction, ſoon acquired civil liberty and political power. It was a fundamental principle in the feudal ſyſtem of policy, that no freeman could be governed or taxed unleſs by his own conſent. In conſequence of this, the vaſſals of every baron were called to his court, in which they eſtabliſhed, by mutual conſent, ſuch regulations as they deemed moſt beneficial to their ſmall ſociety, and granted their ſuperior ſuch ſupplies of money, as were proportional to their abilities, or to his wants. The barons themſelves, conformably to the ſame maxim, were admitted into the ſupreme aſſembly of the nation, and concurred with the ſovereign in enacting laws, or in impoſing taxes. As the ſuperior lord, according to the original plan of feudal policy, retained the direct property of thoſe lands which he granted, in temporary poſſeſſion, to his vaſſals, the law, even after fiefs became hereditary, ſtill ſuppoſed this original practice to ſubſiſt, and a baron continued to be conſidered as the guardian of all who reſided within his territories. The great council of each nation, whether diſtinguiſhed by the name of a parliament, a diet, the Cortes, or the ſtates general, was compoſed entirely of ſuch barons, and dignified eccleſiaſticks, as held immediately of the

Sect. I. the crown. Towns, whether ſituated within the royal domaine, or on the lands of a ſubject, depended for protection on the lord of whom they held. They had no legal name, no political exiſtence, which could entitle them to be admitted into the legiſlative aſſembly, or could give them any authority there. But as ſoon as they were enfranchiſed, and formed into Bodies Corporate, they became legal and independent members of the conſtitution, and acquired all the rights eſſential to freemen. Amongſt theſe, the moſt valuable, was the privilege of a deciſive voice in enacting laws, and in granting ſubſidies. It was natural for cities, accuſtomed to a form of municipal government, according to which no regulation could be eſtabliſhed, and no money could be raiſed without their own conſent, to claim this privilege. The wealth, the power and conſideration which they acquired on recovering their liberty, added weight to their claim; and favourable events happened, or fortunate conjunctures occurred in the different kingdoms of Europe, which facilitated or forwarded their obtaining poſſeſſion of this important right. In England, one of the firſt countries in which the repreſentatives of boroughs were admitted into the great council of the nation, the
A. D. 1265. barons who took arms againſt Henry III. ſummoned them to attend parliament in order to add greater popularity to their party, and to ſtrengthen the barrier againſt the encroachment of regal power. In France, Philip the Fair, a Monarch no leſs ſaga-

cious

cious than enterprizing, confidered them as inftru- Sect. I. ments which might be employed with equal advantage to extend the royal prerogative, to counterbalance the exorbitant power of the nobles, and to facilitate the impofition of new taxes. With thefe views, he introduced the deputies of fuch towns as were formed into communities into the ftates general of the nation [y]. In the Empire, the wealth and immunities of the Imperial cities placed them on a level with the moft confiderable members of the Germanic body. Confcious of their own power and dignity, they pretended to the privilege of forming a feparate bench in the A.D. 1293. diet; and made good their pretenfion [z].

But in what way foever the reprefentatives of The happy effects of this upon government. cities firft gained a place in the legiflature, that event had great influence on the form and genius of government. It tempered the rigour of ariftocratical oppreffion, with a proper mixture of popular liberty: It fecured to the great body of the people, who had formerly no reprefentatives, active and powerful guardians of their rights and privileges: It eftablifhed an intermediate power between the King and nobles, to which each had recourfe alternately, and which at fome times oppofed the ufurpations of the former, on other occafions checked the encroachments of the latter. As foon

[y] Pafquier Recherches de la France, p. 81. edit. Par. 1633.

[z] Pfeffel Abregè de l'hiftoire & droit d'Allemagne, p. 408. 451.

Sect. I. as the repreſentatives of communities gained any degree of credit and influence in the legiſlature, the ſpirit of laws became different from what it had formerly been; it flowed from new principles; it was directed towards new objects; equality, order, the publick good, and the redreſs of grievances, were phraſes and ideas brought into uſe, and which grew to be familiar in the ſtatutes and juriſprudence of the European nations. Almoſt all the efforts in favour of liberty in every country of Europe, have been made by this new power in the legiſlature. In proportion as it roſe to conſideration and influence, the ſeverity of the ariſtocratical ſpirit decreaſed; and the privileges of the people became gradually more extenſive as the ancient and exorbitant juriſdiction of the nobles was abridged [T].

The people acquire liberty by enfranchiſement.

IV. The inhabitants of towns having been declared free by the charters of communities, that part of the people which reſided in the country, and was employed in agriculture, began to recover liberty by enfranchiſement. During the rigour of feudal government, as hath been already obſerved, the great body of the lower people was reduced to ſervitude. They were ſlaves fixed to the ſoil which they cultivated, and together with it were transferred from one proprietor to another, by ſale, or by conveyance. The ſpirit of feudal policy did not favour the enfranchiſement of that order of men. It was an eſtabliſhed maxim, that no vaſſal

[T] NOTE XIX.

could legally diminish the value of a fief, to the detriment of the lord from whom he had received it. In consequence of this, manumission by the authority of the immediate master was not valid; and unless it was confirmed by the superior lord of whom he held, slaves of this species did not acquire a complete right to their liberty. Thus it became necessary to ascend through all the gradations of feudal holding to the King, the lord Paramount [a]. A form of procedure so tedious and troublesome, discouraged the practice of manumission. Domestic or personal slaves often obtained liberty from the humanity or beneficence of their masters, to whom they belonged in absolute property. The condition of slaves fixed to the soil, was much more unalterable.

SECT. I.

BUT the freedom and independence which one part of the people had obtained by the institution of communities, inspired the other with the most ardent desire of acquiring the same privileges; and their superiors, sensible of the benefits which they themselves had derived from former concessions, were less unwilling to gratify them by the grant of new immunities. The enfranchisement of slaves became more frequent; and the Monarchs of France, prompted by necessity no less than by their inclination to reduce the power of the nobles, endeavoured to render it general. Louis X. and his brother Philip, issued ordinances, declaring,

The motives and progress of this.

A. D. 1315, and 1318.

[a] Etablissemens de St. Louis, liv. ii. ch. 34. Ordon. tom. i, 283. not. (a).

"That

SECT. I. "That as all men were by nature free-born, and as their kingdom was called the kingdom of Franks, they determined that it ſhould be ſo in reality as well as in name; therefore they appointed that enfranchiſements ſhould be granted throughout the whole kingdom, upon juſt and reaſonable conditions[b]." Theſe edicts were carried into immediate execution within the royal domaine. The example of their ſovereigns, together with the expectation of conſiderable ſums which they might raiſe by this expedient, led many of the nobles to ſet their dependents at liberty; and ſervitude was gradually aboliſhed in almoſt every province of the kingdom [U]. In Italy, the eſtabliſhment of republican government in their great cities, the genius and maxims of which were extremely different from thoſe of the feudal policy, together with the ideas of equality, which the progreſs of commerce had rendered familiar, gradually introduced the practice of enfranchiſing the ancient *predial* ſlaves. In ſome provinces of Germany, the perſons who had been ſubject to this ſpecies of bondage, were releaſed; in others, the rigour of their ſtate was mitigated. In England, as the ſpirit of liberty gained ground, the very name and idea of perſonal ſervitude, without any formal interpoſition of the legiſlature to prohibit it, was totally baniſhed.

[b] Ordon. tom. i. p. 583, 653.

[U] NOTE XX.

THE

The effects of this upon the improvement of society.

THE effects of such a remarkable change in the condition of so great a part of the people, could not fail of being considerable and extensive. The husbandman, master of his own industry, and secure of reaping for himself the fruits of his labour, became the farmer of the same fields where he had formerly been compelled to toil for the benefit of another. The odious names of master and of slave, the most mortifying and depressing of all distinctions to human nature, were abolished. New prospects opened, and new incitements to ingenuity and enterprize presented themselves to those who were emancipated. The expectation of bettering their fortune, as well as that of raising themselves to a more honourable condition, concurred in calling forth their activity and genius; and a numerous class of men, who formerly had no political existence, and were employed merely as instruments of labour, became useful citizens, and contributed towards augmenting the force or riches of the society, which adopted them as members.

The introduction of a more regular administration of justice, contributes to the improvement of society.

V. THE various expedients which were employed in order to introduce a more regular, equal, and vigorous administration of justice, contributed greatly towards the improvement of society. What was the particular mode of dispensing justice in the several barbarous nations which over-ran the Roman Empire, and took possession of its different provinces, cannot now be determined with certainty. We may conclude from the form of government established among them, as well as from their

SECT. I. their ideas concerning the nature of ſociety, that the authority of the magiſtrate was extremely limited, and the independence of individuals proportionally great. Hiſtory and records, as far as theſe reach back, juſtify this concluſion, and repreſent the ideas and exerciſe of juſtice in all the countries of Europe, as little different from thoſe which muſt take place in a ſtate of nature. To maintain the order and tranquillity of ſociety by the regular execution of known laws; to inflict vengeance on crimes deſtructive of the peace and ſafety of individuals, by a proſecution carried on in the name, and by the authority of the community; to conſider the puniſhment of criminals as a public example to deter others from violating the laws; were objects of government little underſtood in theory, and leſs regarded in practice. The magiſtrate could ſcarce be ſaid to hold the ſword of juſtice; it was left in the hands of private perſons. Reſentment was almoſt the ſole motive for proſecuting crimes; and to gratify that paſſion, was the end and rule in puniſhing them. He who ſuffered the wrong, was the only perſon who had a right to purſue the aggreſſor, and to exact or to remit the puniſhment. From a ſyſtem of judicial procedure, ſo crude and defective as ſeems to be ſcarce compatible with the ſubſiſtence of civil ſociety, diſorder and anarchy flowed. Superſtition concurred with this ignorance concerning the nature of government, in obſtructing the adminiſtration of juſtice, or in rendering it capricious and unequal. To provide remedies for theſe evils, ſo

as to give a more regular courſe to juſtice, was, during ſeveral centuries, one great object of political wiſdom. The regulations for this purpoſe may be reduced to three general heads: To explain theſe, and to point out the manner in which they operated, is an important article in the hiſtory of ſociety among the nations of Europe.

This effected by aboliſhing the practice of private war.

1. The firſt conſiderable ſtep towards eſtabliſhing an equal adminiſtration of juſtice, was the aboliſhment of the right which individuals claimed of waging war with each other, in their own name, and by their own authority. To repel injuries, and to revenge wrongs, is no leſs natural to man than to cultivate friendſhip; and while ſociety remains in its moſt ſimple ſtate, the former is conſidered as a perſonal right no leſs unalienable than the latter. Nor do men in this ſituation deem that they have a title to redreſs their own wrongs alone; they are touched with the injuries of thoſe with whom they are connected, or in whoſe honour they are intereſted; and are no leſs prompt to avenge them. The ſavage, how imperfectly ſoever he may comprehend the principles of political union, feels warmly the ſentiments of ſocial affection, and the obligations ariſing from the ties of blood. On the appearance of an injury or affront offered to his family or tribe, he kindles into rage, and purſues the authors of it with the keeneſt reſentment. He conſiders it as cowardly to expect redreſs from any arm but his own, and as infamous to give up to another the right of determining what reparation

Original ideas of men concerning juſtice.

Sect. I. tion he ſhould accept, or with what vengeance he ſhould reſt ſatisfied.

These lead to the practice of private war.

The maxims and practice of all uncivilized nations, with reſpect to the proſecution and puniſhment of offenders, particularly thoſe of the ancient Germans, and other Barbarians who invaded the Roman Empire, are perfectly conformable to theſe ideas [c]. While they retained their native ſimplicity of manners, and continued to be divided into ſmall tribes or ſocieties, the defects in this imperfect ſyſtem of criminal juriſprudence (if it merits that name) were leſs ſenſibly felt. When they came to ſettle in the extenſive provinces which they had conquered, and to form themſelves into great monarchies; when new objects of ambition preſenting themſelves, increaſed both the number and the violence of their diſſenſions, they ought to have adopted new maxims concerning the redreſs of injuries, and to have regulated by general and equal laws, that which they formerly left to be directed by the caprice of private paſſion. But fierce and haughty chieftains, accuſtomed to avenge themſelves on ſuch as had injured them, did not think of relinquiſhing a right which they conſidered as a privilege of their order, and a mark of their independence. Laws enforced by the authority of Princes and Magiſtrates who poſſeſſed little power, commanded no great degree of reverence. The adminiſtration of juſtice among rude

[c] Tacit. de Mor. German. cap. 21. Vell. Paterc. lib. ii. c. 118.

illiterate people, was not ſo accurate, or deciſive, or uniform, as to induce men to ſubmit implicitly to its determinations. Every offended baron buckled on his armour, and ſought redreſs at the head of his vaſſals. His adverſary met him in like hoſtile array. Neither of them appealed to impotent laws, which could afford them no protection. Neither of them would ſubmit points, in which their paſſions were warmly intereſted, to the ſlow determination of a judicial enquiry. Both truſted to their ſwords for the deciſion of the conteſt. The kindred and dependents of the aggreſſor, as well as of the defender, were involved in the quarrel. They had not even the liberty of remaining neutral. Such as refuſed to act in concert with the party to which they belonged, were not only expoſed to infamy, but ſubjected to legal penalties.

SECT. I.

The pernicious effects of it.

THE different kingdoms of Europe were torn and afflicted, during ſeveral centuries, by inteſtine wars, excited by private animoſities, and carried on with all the rage natural to men of fierce manners, and of violent paſſions. The eſtate of every baron was a kind of independent territory, diſjoined from thoſe around it, and the hoſtilities between them were perpetual. The evil became ſo inveterate and deep-rooted, that the form and laws of private war were aſcertained, and regulations concerning it made a part in the ſyſtem of juriſprudence[d], in the ſame manner as if this practice

[d] Beaumanoir Couſtumes de Beauvoiſis, ch. 59, et les notes de Thaumaſſiere, p. 447.

SECT. I. had been founded in ſome natural right of humanity, or in the original conſtitution of civil ſociety.

Various methods employed in order to aboliſh it.

So great was the diſorder, and ſuch the calamities which theſe perpetual hoſtilities occaſioned, that various efforts were made to wreſt from the nobles this pernicious privilege which they claimed. It was the intereſt of every ſovereign to aboliſh a practice which almoſt annihilated his authority. Charlemagne prohibited it by an expreſs law, as an invention of the devil to deſtroy the order and happineſs of ſociety [e]; but the reign of one Monarch, however vigorous and active, was too ſhort to extirpate a cuſtom ſo firmly-eſtabliſhed. Inſtead of enforcing this prohibition, his feeble ſucceſſors durſt venture on nothing more than to apply palliatives. They declared it unlawful for any perſon to commence war, until he had ſent a formal defiance to the kindred and dependents of his adverſary; they ordained that, after the commiſſion of the treſpaſs or crime which gave riſe to a private war, forty days muſt elapſe before the perſon injured ſhould attack the vaſſals of his adverſary; they enjoined all perſons to ſuſpend their private animoſities, and to ceaſe from hoſtilities when the King was engaged in any war againſt the enemies of the nation. The church co-operated with the civil magiſtrate, and interpoſed its authority in order to extirpate a practice ſo repugnant to the ſpirit of Chriſtianity. Various councils iſſued decrees, prohibiting all private wars; and

[e] Capitul. A. D. 801. Edit. Baluz. Vol. i. p. 371.

denounced

SECT. I.

denounced the heavieſt anathemas againſt ſuch as ſhould diſturb the tranquillity of ſociety, by claiming or exerciſing that barbarous right. The aid of religion was called in to combat and ſubdue the ferocity of the times. The Almighty was ſaid to have manifeſted, by viſions and revelations to different perſons, his diſapprobation of that ſpirit of revenge, which armed one part of his creatures againſt the other. Men were required, in the name of God, to ſheath their ſwords, and to remember the ſacred ties which united them as Chriſtians, and as members of the ſame ſociety. But this junction of civil and eccleſiaſtic authority, though ſtrengthened by every thing moſt apt to alarm and to overawe the credulous ſpirit of thoſe ages, produced no other effect than ſome temporary ſuſpenſions of hoſtilities, and a ceſſation from war on certain days and ſeaſons conſecrated to the more ſolemn acts of devotion. The nobles continued to aſſert this dangerous privilege; they refuſed to obey ſome of the laws calculated to annul or circumſcribe it; they eluded others; they petitioned; they remonſtrated; they ſtruggled for the right of private war as the higheſt and moſt honourable diſtinction of their order. Even ſo late as the fourteenth century, we find the nobles in ſeveral provinces of France contending for their ancient method of terminating their differences by the ſword, in preference to that of ſubmitting them to the deciſion of any judge. The final abolition of this practice in that kingdom, and the other countries in which it prevailed, is not to be aſcribed ſo much to the force of ſta-

SECT. I.

tutes and decrees, as to the gradual increaſe of the royal authority, and to the imperceptible progreſs of juſter ſentiments concerning government, order, and public ſecurity [X].

The prohibition of trial by judicial combat, another improvement in the adminiſtration of juſtice.

2. THE prohibition of the form of trial by judicial combat, was another conſiderable ſtep towards the introduction of ſuch regular government as ſecured publick order and private tranquillity. As the right of private war left many of the quarrels among individuals to be decided, like thoſe between nations, by arms; the form of trial by judicial combat, which was eſtabliſhed in every country of Europe, baniſhed equity from courts of juſtice, and rendered chance or force the arbiter of their determinations. In civilized nations, all tranſactions of any importance are concluded in writing. The exhibition of the deed or inſtrument is full evidence of the fact, and aſcertains with preciſion what each party has ſtipulated to perform. But among a rude people, when the arts of reading and writing were ſuch uncommon attainments, that to be maſter of either, intitled a perſon to the appellation of a clerk or learned man, ſcarcely any thing was committed to writing but treaties between Princes, their grants and charters to their ſubjects, or ſuch tranſactions between private parties as were of extraordinary conſequence, or had an extenſive effect. The greater part of affairs in common life and buſineſs, were carried on by verbal con-

Defects in the judicial proceedings of the middle ages.

[X] NOTE XXI.

tracts

tracts or promises. This, in many civil questions, not only made it difficult to bring proof sufficient to establish any claim, but encouraged falsehood and fraud by rendering them extremely easy. Even in criminal cases, where a particular fact must be ascertained, or an accusation be disproved, the nature and effect of legal evidence was little understood by barbarous nations. To define with accuracy that species of evidence which a court had reason to expect; to determine when it ought to insist on positive proof, and when it should be satisfied with a proof from circumstances; to compare the testimony of discordant witnesses; and to fix the degree of credit due to each; were discussions too intricate and subtile for the jurisprudence of ignorant ages. In order to avoid encumbering themselves with these, a more simple form of procedure was introduced into courts as well civil as criminal. In all cases, where the notoriety of the fact did not furnish the clearest and most direct evidence, the person accused, or he against whom an action was brought, was called legally, or offered voluntarily to purge himself by oath; and upon his declaring his innocence, he was instantly acquitted [f]. This absurd practice effectually screened guilt and fraud from detection or punishment, by rendering the temptation to perjury so powerful, that it was not easy to resist it. The pernicious effects of it were sensibly felt; and in order to guard

[f] Leg. Burgund. Tit. 8, & 45. Leg. Aleman. Tit. 89. Leg. Baiwar. Tit. 8. § 5. 2. &c.

against

SECT. I. againſt them, the laws ordained, that oaths ſhould be adminiſtered with great ſolemnity, and accompanied with every circumſtance which could inſpire religious reverence, or ſuperſtitious terror [g]. This, however, proved a feeble remedy: theſe ceremonious rites became familiar, and their impreſſion on the imagination gradually diminiſhed; men who could venture to diſregard truth, were not apt to ſtartle at the ſolemnities of an oath. Their obſervation of this, put legiſlators upon deviſing a new expedient for rendering the purgation by oath more certain and ſatisfactory. They required the perſon accuſed to appear with a certain number of freemen, his neighbours or relations, who corroborated the oath which he took, by ſwearing that they believed all that he had uttered to be true. Theſe were called *Compurgators*, and their number varied according to the importance of the ſubject in diſpute, or the nature of the crime with which a perſon was charged [h]. In ſome caſes, the concurrence of no leſs than three hundred of theſe auxiliary witneſſes was requiſite to acquit the perſon accuſed [i]. But even this device was found to be ineffectual. It was a point of honour with every man in Europe, during ſeveral ages, not to deſert the chief on whom he depended, and to ſtand by thoſe with whom the ties of blood connected him. Whoever then was bold enough to violate the

[g] Du Cange Gloſſar. voc. *Juramentum*, vol. iii. p. 1607. Edit. Benedict. [h] Du Cange, ibid. vol. iii. p. 1599.

[i] Spelman Gloſſar. voc. *Aſſath.* Gregor. Turon. Hiſt. lib. viii. c. 9.

the laws, was ſure of devoted adherents, willing to abet, and eager to ſerve him in whatever manner he required. The formality of calling Compurgators, proved an apparent, not a real ſecurity, againſt falſehood and perjury; and the ſentences of courts, while they continued to refer every point in queſtion to the oath of the defendant, became ſo flagrantly iniquitous as excited univerſal indignation againſt this method of procedure [k].

Theſe introduced the practice of appealing to heaven:

SENSIBLE of theſe defects, but ſtrangers to the manner of correcting them, or of introducing a more proper form, our anceſtors, as an infallible method of diſcovering truth, and of guarding againſt deception, appealed to Heaven, and referred every point in diſpute to be determined, as they imagined, by the deciſions of unerring wiſdom and impartial juſtice. The perſon accuſed, in order to prove his innocence, ſubmitted, in ſome caſes, to trial, by plunging his arm in boiling water; by lifting a red-hot iron with his naked hand; by walking bare-foot over burning plough-ſhares; or by other experiments equally perilous and formidable. On other occaſions, he challenged his accuſer to fight him in ſingle combat. All theſe various forms of trial were conducted with many devout ceremonies; the miniſters of religion were employed, the Almighty was called upon to interpoſe for the manifeſtation of guilt, and for the protection of innocence; and whoever eſcaped unhurt, or came off victorious,

Particularly by judicial combat.

[k] Leg. Langobard. lib. ii. tit. 55. § 34.

was

SECT. I. was pronounced to be acquitted by the *Judgment of God*[1].

The introduction of this practice favoured by the superstition of the middle ages;

AMONG all the whimsical and absurd institutions which owe their existence to the weakness of human reason, this, which submitted questions that affected the property, the reputation, and the lives of men, to the determination of chance, or of bodily strength and address, appears to be the most extravagant and preposterous. There were circumstances, however, which led the nations of Europe to consider this equivocal mode of deciding any point in contest, as a direct appeal to heaven, and a certain method of discovering its will. As men are unable to comprehend the manner in which the Almighty carries on the government of the universe, by equal, fixed, and general laws, they are apt to imagine, that in every case which their passions or interest render important in their own eyes, the Supreme Ruler of all ought visibly to display his power, in vindicating innocence and punishing vice. It requires no inconsiderable degree of science and philosophy to correct this popular error. But the sentiments prevalent in Europe during the dark ages, instead of correcting, strengthened it. Religion, for several centuries, consisted chiefly in believing the legendary history of those saints whose names croud and disgrace the Romish calendar. The fabulous tales concerning their miracles, had been declared authentic by the bulls of Popes, and

[1] Murat. Dissertatio de judiciis Dei. Antiquit. Italic. vol. iii. p. 612.

the

the decrees of councils; they made the great ſubject of the inſtructions which the clergy offered to the people, and were received by them with implicit credulity and admiration. By theſe, men were accuſtomed to believe that the eſtabliſhed laws of nature might be violated on the moſt frivolous occaſions, and were taught to look rather for particular and extraordinary acts of power under the divine adminiſtration, than to contemplate the regular progreſs and execution of a general plan. One ſuperſtition prepared the way for another; and whoever believed that the Supreme Being had interpoſed miraculouſly on thoſe trivial occaſions mentioned in legends, could not but expect his intervention in matters of greater importance, when ſolemnly referred to his deciſion.

And likewiſe by their martial ſpirit.

WITH this ſuperſtitious opinion, the martial ſpirit of Europe, during the middle ages, concurred in eſtabliſhing the mode of trial by judicial combat. To be ready to maintain with his ſword whatever his lips had uttered, was the firſt maxim of honour with every gentleman. To aſſert their own rights by force of arms, to inflict vengeance on thoſe who had injured or affronted them, were the diſtinction and pride of high-ſpirited nobles. The form of trial by combat coinciding with this maxim, flattered and gratified theſe paſſions. Every man was the guardian of his own honour, and of his own life; the juſtice of his cauſe, as well as his future reputation, depended on his own courage and prowe ſs. This mode of deciſion was conſidered,

Sect. I. fidered, accordingly, as one of the happieft efforts of wife policy; and as foon as it was introduced, all the forms of trial by fire or water, and other fuperftitious experiments, fell into difufe, or were employed only in controverfies between perfons of inferior rank. The trial by combat was authorized over all Europe, and received in every country with equal fatisfaction. Not only queftions concerning uncertain or contefted facts, but general and abftract points in law, were determined by the iffue of a combat; and the latter was deemed a method of difcovering truth more liberal as well as more fatisfactory, than that by examination and argument. Not only might parties, whofe minds were exafperated by the eagernefs and the hoftility of oppofition, defy their antagonift, and require him to make good his charge, or to prove his innocence, with his fword; but witneffes, who had no intereft in the iffue of the queftion, though called to declare the truth by laws which ought to have afforded them protection, were equally expofed to the danger of a challenge, and equally bound to affert the veracity of their evidence by dint of arms. To complete the abfurdities of this military jurifprudence, even the character of a judge was not facred from its violence. Any one of the parties might interrupt a judge when about to deliver his opinion; might accufe him of iniquity and corruption in the moft reproachful terms, and throwing down his gauntlet, might challenge him to defend his integrity in the field; nor could he, without infamy, refufe

to

to accept the defiance, or decline to enter the liſts againſt ſuch an adverſary.

It becomes univerſal.

Thus the form of trial by combat, like other abuſes, ſpread gradually, and extended to all perſons, and almoſt to all caſes. Eccleſiaſtics, women, minors, ſuperannuated and infirm perſons, who could not with decency or juſtice be compelled to take arms, and to maintain their own cauſe, were obliged to produce champions, whom they engaged, by affection or rewards, to fight their battles. The ſolemnities of a judicial combat were ſuch as were natural in an action, which was conſidered both as a formal appeal to God, and as the final deciſion of queſtions of the higheſt moment. Every circumſtance relating to them, was regulated by the edicts of Princes, and explained in the comments of lawyers, with a minute and even ſuperſtitious accuracy. Skill in theſe laws and rites was the only ſcience of which warlike nobles boaſted, or which they were ambitious to attain [m].

The pernicious effects of it.

By this barbarous cuſtom, the natural courſe of proceeding, both in civil and criminal queſtions, was entirely perverted. Force uſurped the place of equity in courts of judicature, and juſtice was baniſhed from her proper manſion. Diſcernment, learning, integrity, were qualities leſs neceſſary to a judge than bodily ſtrength and dexterity in the

[m] See a curious diſcourſe concerning the laws of judicial combat, by Thomas of Woodſtock, Duke of Glouceſter, uncle to Richard II. in Spelman's Gloſſar. voc. *Campus*.

SECT. I. use of arms. Daring courage, and superior vigour or address, were of more moment towards securing the favourable issue of a suit, than the equity of a cause, or the clearness of the evidence. Men, of course, applied themselves to cultivate the talents which they found to be of greatest utility. As strength of body and address in arms were no less requisite in those lists which they were obliged to enter in defence of their private rights, than in the field of battle, where they met the enemies of their country, it became the great object of education, as well as the chief employment in life, to acquire these martial accomplishments. The administration of justice, instead of accustoming men to listen to the voice of equity, or to reverence the decisions of law, added to the ferocity of their manners, and taught them to consider force as the great arbiter of right and wrong.

Various expedients for abolishing this practice.

THESE pernicious effects of the trial by combat were so obvious, that they did not altogether escape the view of the unobserving age in which it was introduced. The clergy, from the beginning, remonstrated against it as repugnant to the spirit of Christianity, and subversive of justice and order [n]. But the maxims and passions which favoured it, had taken such hold of the minds of men, that they disregarded admonitions and censures, which, on other occasions, would have struck them with terror. The evil was too great and inveterate to yield to that remedy, and continuing to increase,

[n] Du Cange Glossar. voc. *Duellum*, vol. ii. p. 1675.

the

the civil power at length found it neceſſary to interpoſe. Conſcious, however, of their own limited authority, monarchs proceeded with caution, and their firſt attempts to reſtrain, or to ſet any bounds to this practice, were extremely feeble. One of the earlieſt reſtrictions of this practice which occurs in the hiſtory of Europe, is that of Henry I. of England. It extended no farther than to prohibit the trial by combat in queſtions concerning property of ſmall value [o]. Louis VII. of France imitated his example, and iſſued an edict to the ſame effect [p]. St. Louis, whoſe ideas as a legiſlator were far ſuperior to thoſe of his age, endeavoured to introduce a more perfect juriſprudence, and to ſubſtitute the trial by evidence, in place of that by combat. But his regulations, with reſpect to this, were confined to his own domains; for the great vaſſals of the crown poſſeſſed ſuch independent authority, and were ſo fondly attached to the ancient practice, that he durſt not venture to extend it to the whole kingdom. Some barons voluntarily adopted his regulations. The ſpirit of courts of juſtice became averſe to the mode of deciſion by combat, and diſcouraged it on every occaſion. The nobles, nevertheleſs, thought it ſo honourable to depend for the ſecurity of their lives and fortunes on their own courage alone, and contended with ſo much vehemence for the preſervation of this favourite privilege of their order, that the ſuc-

Sect. I.

[o] Bruſſel Uſage des Fiefs. vol. ii. p. 962.

[p] Ordon. tom. i. p. 16.

SECT. I. ceſſors of St. Louis, unable to oppoſe, and afraid of offending ſuch powerful ſubjects, were obliged not only to tolerate, but to authorize the practice which he had attempted to aboliſh[q]. In other countries of Europe, efforts equally zealous were employed to maintain the eſtabliſhed cuſtom; and ſimilar conceſſions were extorted from their reſpective ſovereigns. It continued, however, to be an object of policy with every monarch of abilities or vigour, to explode the trial by combat; and various edicts were iſſued for this purpoſe. But the obſervation which was made concerning the right of private war, is equally applicable to the mode of trial under review. No cuſtom, how abſurd ſoever it may be, if it has ſubſiſted long, or derives its force from the manners and prejudices of the age in which it prevails, was ever aboliſhed by the bare promulgation of laws and ſtatutes. The ſentiments of the people muſt change, or ſome new power ſufficient to counteract it muſt be introduced. Such a change, accordingly, took place in Europe, as ſcience gradually increaſed, and ſociety advanced towards more perfect order. In proportion as the prerogative of Princes extended, and came to acquire new force, a power, intereſted in ſuppreſſing every practice favourable to the independence of the nobles, was introduced. The ſtruggle, nevertheleſs, ſubſiſted for ſeveral centuries; ſometimes the new regulations and ideas ſeemed to gain ground; ſometimes ancient habits recurred; and though, upon the whole, the trial

[q] Ordon. tom. i. p. 328, 390, 435.

by

by combat went more and more into diſuſe, yet inſtances of it occur, as late as the ſixteenth century, in the hiſtory both of France and of England. In proportion as it declined, the regular adminiſtration of juſtice was reſtored, the proceedings of courts were directed by known laws, the ſtudy of theſe became an object of attention to judges, and the people of Europe advanced faſt towards civility, when this great cauſe of the ferocity of their manners was removed [Y].

The privilege of appealing from the courts of the barons, another great improvement in the adminiſtration of juſtice.

3. By authorizing the right of appeal from the courts of the Barons to thoſe of the King, and ſubjecting the deciſions of the former to the review of the latter, a new ſtep, not leſs conſiderable than theſe which I have already mentioned, was taken towards eſtabliſhing the regular, conſiſtent, and vigorous adminiſtration of juſtice. Among all the encroachments of the feudal nobles on the prerogative of their Monarchs, their uſurping the adminiſtration of juſtice with ſupreme authority, both in civil and criminal cauſes, within the precincts of their own eſtates, was the moſt ſingular. In other nations, ſubjects have contended with their Princes, and have endeavoured to extend their own power and privileges; but in the hiſtory of their ſtruggles and pretenſions, we diſcover nothing ſimilar to this right which the feudal barons claimed, and acquired. It muſt have been ſomething peculiar in their genius and manners that ſuggeſted this idea, and prompted

Origin of the ſupreme and independent juriſdiction of the nobility.

[Y] NOTE XXII.

SECT. I. them to inſiſt on ſuch a claim. Among the rude people who conquered the various provinces of the Roman Empire, and eſtabliſhed new kingdoms there, the paſſion of reſentment, too impetuous to bear controul, was permitted to remain almoſt unreſtrained by the authority of laws. The perſon offended, as has been obſerved, retained not only the right of proſecuting but of puniſhing his adverſary. To him it belonged to inflict ſuch vengeance as ſatiated his rage, or to accept of ſuch ſatisfaction as appeaſed it. But while fierce barbarians continued to be the ſole judges in their own cauſe, their enmities were implacable, and immortal; they ſet no bounds either to the degree of their vengeance, or to the duration of their reſentment. The exceſſes which this occaſioned, proved ſo deſtructive of peace and order in ſociety, as forced them to think of ſome remedy. At firſt, arbiters interpoſed, and by perſuaſion or intreaty prevailed on the party offended to accept of a fine or compoſition from the aggreſſor, and to drop all farther proſecution. But as ſubmiſſion to perſons who had no legal or magiſterial authority was altogether voluntary, it became neceſſary to eſtabliſh judges with power ſufficient to enforce their own deciſions. The leader whom they were accuſtomed to follow and to obey, whoſe courage they reſpected, and in whoſe integrity they placed confidence, was the perſon to whom a martial people naturally committed this important prerogative. Every chieftain was the commander of his tribe in war, and their judge

judge in peace. Every baron led his vaſſals to the field, and adminiſtered juſtice to them in his hall. Their high-ſpirited dependents would not have recognized any other authority, or have ſubmitted to any other juriſdiction. But in times of turbulence and violence, the exerciſe of this new function was attended not only with trouble, but with danger. No perſon could aſſume the character of a judge, if he did not poſſeſs power ſufficient to protect the one party from the violence of private revenge, and to compel the other to accept of ſuch reparation as he enjoined. In conſideration of the extraordinary efforts which this office required, judges, beſides the fine which they appointed to be paid as a compenſation to the perſon or family who had been injured, levied an additional ſum as a recompence for their own labour; and in all the feudal kingdoms the latter was as preciſely aſcertained, and as regularly exacted, as the former. SECT. I.

THUS, by the natural operation of circumſtances peculiar to the manners or political ſtate of the feudal nations, ſeparate and territorial juriſdictions came not only to be eſtabliſhed in every kingdom, but were eſtabliſhed in ſuch a way, that the intereſt of the barons concurred with their ambition in maintaining and extending them. It was not merely a point of honour with the feudal nobles to diſpenſe juſtice to their vaſſals; but from the exerciſe of that power aroſe one capital branch of their revenue; and the emoluments of their courts The extent and bad effects of this privilege.

SECT. I. were frequently the main ſupport of their dignity. It was with infinite zeal that they aſſerted and defended this high privilege of their order. By this inſtitution, however, every kingdom in Europe was ſplit into as many ſeparate principalities as it contained powerful barons. Their vaſſals, whether in peace or in war, were hardly ſenſible of any authority, but that of their ſuperior lord. They felt themſelves ſubject to no other command. They were amenable to no other juriſdiction. The ties which linked together theſe ſmaller confederacies became cloſe and firm; the bonds of public union relaxed, or were diſſolved. The nobles ſtrained their invention in deviſing regulations that tended to aſcertain and perpetuate this diſtinction. In order to guard againſt any appearance of ſubordination in their courts to thoſe of the crown, they conſtrained their monarchs to prohibit the royal judges from entering their territories, or from claiming any juriſdiction there; and if, either through miſtake, or from the ſpirit of encroachment, any royal judge ventured to extend his authority to the vaſſals of a baron, they might plead their right of exemption, and the lord of whom they held could not only reſcue them out of his hands, but was intitled to legal reparation for the injury and affront offered to him. The juriſdiction of the royal judges ſcarcely reached beyond the narrow limits of the King's demeſnes. Inſtead of a regular gradation of courts, all acknowledging the authority of the ſame general laws, and looking up to theſe

as the guides of their decisions, there were in every feudal kingdom a thousand independent tribunals, the proceedings of which were directed by local customs and contradictory forms. The collision of jurisdiction between these numerous courts often retarded the execution of justice: The variety and caprice of their modes of procedure must have for ever kept the administration of it from attaining any degree of uniformity or perfection. Sect. I.

Expedients employed in order to limit or abolish it.

All the monarchs of Europe perceived these encroachments on their jurisdiction, and bore them with impatience. But the usurpations of the nobles were so firmly established, and the danger of endeavouring to overturn them by open force was so manifest, that they were obliged to remain satisfied with attempts to undermine them. Various expedients were employed for this purpose; each of which merit attention, as they mark the progress of law and equity in the several kingdoms of Europe. At first, Princes endeavoured to circumscribe the jurisdiction of the barons, by permitting them to take cognizance only of smaller offences, reserving those of greater moment, under the appellation of *Pleas of the Crown*, and *Royal Causes*, to be tried in the King's courts. This affected only the barons of inferior note; the more powerful nobles scorned such a distinction, and not only claimed unlimited jurisdiction, but obliged their sovereigns to grant them charters, conveying or recognizing this privilege in the most

SECT. I. ample form. The attempt, neverthelefs, was productive of fome good confequences, and paved the way for more. It turned the attention of men towards a jurifdiction diftinct from that of the baron whofe vaffals they were; it accuftomed them to the pretenfions of fuperiority which the crown claimed over territorial judges; and taught them, when oppreffed by their own fuperior lord, to look up to their fovereign as their protector. This facilitated the introduction of appeals, by which Princes brought the decifions of the baron's courts under the review of the royal judges. While trial by combat fubfifted in full vigour, no point decided according to that mode, could be brought under the review of another court. It had been referred to the judgment of God; the iffue of battle had declared his will; and it would have been impious to have called in queftion the equity of the divine decifion. But as foon as that barbarous cuftom began to fall into difufe, Princes encouraged the vaffals of the barons to fue for redrefs, by appealing to the royal courts. The progrefs of this practice, however, was flow and gradual. The firft inftances of appeals were on account of *the delay*, or *the refufal of juftice* in the baron's court; and as thefe were countenanced by the ideas of fubordination in the feudal conftitution, the nobles allowed them to be introduced without much oppofition. But when thefe were followed by appeals on account of *the injuftice* or *iniquity of the fentence*, the nobles then began to be fenfible, that if this innovation became general,

general, the ſhadow of power alone would remain in their hands, and all real authority and juriſdiction would center in thoſe courts which poſſeſſed the right of review. They inſtantly took the alarm, remonſtrated againſt the encroachment, and contended boldly for their ancient privileges. But the monarchs in the different kingdoms of Europe purſued their plan with ſteadineſs and prudence. Though forced to ſuſpend their operations on ſome occaſions, and ſeemingly to yield when any formidable confederacy of their vaſſals united againſt them, they reſumed their meaſures as ſoon as they obſerved the nobles to be remiſs or feeble, and puſhed them with vigour. They appointed the royal courts, which originally were ambulatory, and irregular with reſpect to their times of meeting, to be held in a fixed place, and at ſtated ſeaſons. They were ſolicitous to name judges of more diſtinguiſhed abilities than ſuch as preſided in the courts of the barons. They added dignity to their character, and ſplendour to their aſſemblies. They laboured to render their forms regular, and their decrees conſiſtent. Such judicatories became, of courſe, the objects of public confidence as well as veneration. The people, relinquiſhing the partial tribunals of their lords, were eager to bring every ſubject of conteſt under the more equal and diſcerning eye of thoſe whom their ſovereign had choſen to give judgment in his name. Thus Kings became once more the heads of the community, and the diſpenſers of

SECT. I. juſtice to their ſubjects. The barons, in ſome kingdoms, ceaſed to exerciſe their right of juriſdiction, becauſe it ſunk into contempt; in others, it was circumſcribed by ſuch regulations as rendered it innocent, or it was entirely aboliſhed by expreſs ſtatutes. Thus the adminiſtration of juſtice taking its riſe from one ſource, and following one direction, held its courſe in every ſtate with more uniformity, and with greater force [Z].

The regulations of the canon law promote a more perfect adminiſtration.

VI. THE forms and maxims of the canon law, which were become univerſally reſpectable from their authority in the ſpiritual courts, contributed not a little towards theſe improvements in juriſprudence which I have enumerated. If the canon law be conſidered politically, either as a ſyſtem framed on purpoſe to aſſiſt the clergy in uſurping powers and juriſdiction no leſs repugnant to the nature of their function, than inconſiſtent with the order of government; or as the chief inſtrument in eſtabliſhing the dominion of the Popes, which ſhook the throne, and endangered the liberties of every kingdom in Europe, we muſt pronounce it one of the moſt formidable engines ever formed againſt the happineſs of civil ſociety. But if we contemplate it merely as a code of laws reſpecting the rights and property of individuals, and attend only to the civil effects of its deciſions concerning theſe, we muſt view it in a different, and a much more favourable light. In ages of

The progreſs of eccleſiaſtical uſurpation.

[Z] NOTE XXIII.

ignorance

ignorance and credulity, the miniſters of religion are the objects of ſuperſtitious veneration. When the barbarians who over-ran the Empire firſt embraced the Chriſtian faith, they found the clergy in poſſeſſion of conſiderable power; and they naturally transferred to theſe new guides the profound ſubmiſſion and reverence which they were accuſtomed to yield to the prieſts of that religion which they had forſaken. They deemed their perſons to be as ſacred as their function; and would have conſidered it as impious to ſubject them to the profane juriſdiction of the laity. The clergy were not blind to the advantages which the weakneſs of mankind afforded them. They eſtabliſhed courts, in which every queſtion relating to their own character, their function, or their property, was tried. They pleaded, and obtained an almoſt total exemption from the authority of civil judges. Upon different pretexts, and by a multiplicity of artifices, they communicated this privilege to ſo many perſons, and extended their juriſdiction to ſuch a variety of caſes, that the greater part of thoſe affairs which give riſe to conteſt and litigation, was drawn under the cognizance of the ſpiritual courts.

The plan of eccleſiaſtical juriſprudence more perfect than that in the civil courts.

BUT in order to diſpoſe the laity to ſuffer theſe uſurpations without murmuring or oppoſition, it was neceſſary to convince them, that the adminiſtration of juſtice would be rendered more perfect by the eſtabliſhment of this new juriſdiction.

This

SECT. I.

This was not a difficult undertaking, at the period when the clergy carried on their encroachments with the greateſt ſucceſs. That ſcanty portion of ſcience which ſerved to guide men in the ages of darkneſs, was wholly engroſſed by the clergy. They alone were accuſtomed to read, to enquire, and to reaſon. Whatever knowledge of ancient juriſprudence had been preſerved, either by tradition, or in ſuch books as had eſcaped the deſtructive rage of barbarians, was poſſeſſed only by them. Upon the maxims of that excellent ſyſtem, they founded a code of laws conſonant to the great principles of equity. Being directed by fixed and known rules, the forms of their courts were aſcertained, and their deciſions became uniform and conſiſtent. Nor did they want authority ſufficient to enforce their ſentences. Excommunication and other eccleſiaſtical cenſures, were puniſhments more formidable than any that civil judges could inflict in ſupport of their decrees.

The good effects of imitating and adopting it.

It is not ſurprizing, then, that eccleſiaſtical juriſprudence ſhould become ſuch an object of admiration and reſpect; that exemption from civil juriſdiction was courted as a privilege, and conferred as a reward. It is not ſurprizing, that even to rude people, the maxims of the canon law ſhould appear more equal and juſt than that ill-digeſted juriſprudence which directed all proceedings in the civil courts. According to the latter, the differences between contending barons were

terminated,

terminated, as in a ftate of nature, by the fword; according to the former, every matter was fubjected to the decifion of laws. The one, by permitting judicial combats, left chance and force to be arbiters of right or wrong, of truth or falfehood; the other, paffed judgment with refpect to thefe by the maxims of equity, and the teftimony of witneffes. Any error or iniquity in a fentence pronounced by a baron to whom feudal jurifdiction belonged, was irremediable, becaufe originally it was fubject to the review of no fuperior tribunal; the ecclefiaftical law eftablifhed a regular gradation of courts, through all which a caufe might be carried by appeal, until it was determined by that authority which was held to be fupreme in the church. Thus the genius and principles of the canon law prepared men for approving thefe three great alterations in the feudal jurifprudence which I have mentioned. But it was not with refpect to thefe points alone that the canon law fuggefted improvements beneficial to fociety. Many of the regulations, now deemed the barriers of perfonal fecurity, or the fafeguards of private property, are contrary to the fpirit, and repugnant to the maxims of the civil jurifprudence, known in Europe during feveral centuries, and were borrowed from the rules and practice of the ecclefiaftical courts. By obferving the wifdom and equity of the decifions in thefe courts, men began to perceive the neceffity either of deferting the martial

tribunals

SECT. I. tribunals of the barons, or of attempting to reform them [AA].

The revival of the Roman law contributes more liberal ideas concerning justice and order.

VII. THE revival of the knowledge and ftudy of the Roman law co-operated with the caufes which I have mentioned, in introducing more juft and liberal ideas concerning the nature of government, and the adminiftration of juftice. Among the calamities which the devaftations of the barbarians who broke in upon the Empire brought upon mankind, one of the greateft was their overturning the fyftem of Roman jurifprudence, the nobleft monument of the wifdom of that great people, formed to fubdue and to govern the world. The laws and regulations of a civilized community, were altogether repugnant to the manners and ideas of thefe fierce invaders. They had refpect to objects, of which a rude people had no conception; and were adapted to a ftate of fociety with which they were entirely unacquainted. For this reafon, wherever they fettled, the Roman jurifprudence foon funk into oblivion, and lay buried for fome centuries under the load of thofe inftitutions which the inhabitants of Europe dignified with the name of laws. But towards the middle of the twelfth century, a copy of Juftinian's Pandects was accidentally difcovered in Italy. By that time, the ftate of fociety was fo far advanced, and the ideas of men fo much en-

The circumftances from which the Roman law fell into oblivion.

[AA] NOTE XXIV.

larged and improved by the occurrences of ſeveral centuries, during which they had continued in political union, that they were ſtruck with admiration of a ſyſtem which their anceſtors could not comprehend. Though they had not hitherto attained ſuch a degree of refinement, as to catch from the ancients a reliſh for true philoſophy, or ſpeculative ſcience; though they were ſtill inſenſible to the beauty and elegance of claſſical compoſition; they were ſufficiently qualified to judge with reſpect to the merit of their ſyſtem of laws, in which all the points moſt intereſting to mankind, and the chief objects of their attention in every age, were ſettled with diſcernment, preciſion and equity. All men of letters ſtudied this new ſcience with eagerneſs; and within a few years after the diſcovery of the Pandects, profeſſors of civil law were appointed, who taught it publickly in moſt countries of Europe.

SECT. I. Circumſtances which favoured the revival of it.

THE effects of having ſuch a perfect model to ſtudy and to imitate were ſoon manifeſt. Men, as ſoon as they were acquainted with fixed and general laws, perceived the advantage of them, and became impatient to aſcertain the principles and forms by which judges ſhould regulate their deciſions. Such was the ardour with which they carried on an undertaking of ſo great importance to ſociety, that before the cloſe of the twelfth century, the feudal law was reduced into a regular ſyſtem; the code of canon law was enlarged and methodized;

The effects of this upon the ideas of men, and the diſpenſation of juſtice.

SECT. I. methodized; and the loose uncertain customs of different provinces or kingdoms were collected and arranged with an order and accuracy acquired from the knowledge of Roman jurisprudence. In some countries of Europe the Roman law was adopted as subsidiary to their own municipal law; and all cases to which the latter did not extend, were decided according to the principles of the former. In others, the maxims as well as forms of Roman jurisprudence mingled imperceptibly with the laws of the country, and had a powerful, though less sensible, influence, in improving and perfecting them [BB].

From all these arose a distinction in professions.

THESE various improvements in the system of jurisprudence, and administration of justice, occasioned a change in manners, of great importance, and of extensive effect. They gave rise to a distinction of professions; they obliged men to cultivate different talents, and to aim at different accomplishments, in order to qualify themselves for the various departments and functions which became necessary in society [r]. Among uncivilized nations, there is but one profession honourable, that of arms. All the ingenuity and vigour of the human mind are exerted in acquiring military skill, or address. The functions of peace are few and simple; and require no particular course of

[BB] NOTE XXV.

[r] Dr. Ferguson's Essay on the History of Civil Society, part iv. sect. 1.

education

education or of ſtudy, as a preparation for diſcharging them. This was the ſtate of Europe during ſeveral centuries. Every gentleman, born a ſoldier, ſcorned any other occupation; he was taught no ſcience but that of war; even his exerciſes and paſtimes were feats of martial proweſs. Nor did the judicial character, which perſons of noble birth were alone intitled to aſſume, demand any degree of knowledge beyond that which ſuch untutored ſoldiers poſſeſſed. To recollect a few traditionary cuſtoms which time had confirmed, and rendered reſpectable; to mark out the liſts of battle with due formality; to obſerve the iſſue of the combat; and to pronounce whether it had been conducted according to the laws of arms; included every thing that a baron, who acted as a judge, found it neceſſary to underſtand. Sect. I.

The effects of this on ſociety.

But when the forms of legal proceedings were fixed, when the rules of deciſion were committed to writing, and collected into a body, law became a ſcience, the knowledge of which required a regular courſe of ſtudy, together with long attention to the practice of courts. Martial and illiterate nobles, had neither leiſure nor inclination to undertake a taſk ſo laborious, as well as ſo foreign from all the occupations which they deemed entertaining, or ſuitable to their rank. They gradually relinquiſhed their places in courts of juſtice, where their ignorance expoſed them to contempt. They became weary of attending to the diſcuſſion

SECT. I. of cafes, which grew too intricate for them to comprehend. Not only the judicial determination of points which were the fubject of controverfy, but the conduct of all legal bufinefs and tranfactions was committed to perfons trained by previous ftudy and application to the knowledge of law. An order of men, to whom their fellow-citizens had daily recourfe for advice, and to whom they looked up for decifion in their moft important concerns, naturally acquired confideration and influence in fociety. They were advanced to honours which had been confidered as the peculiar rewards of military virtue. They were entrufted with offices of the higheft dignity, and moft extenfive power. Thus, another profeffion than that of arms, came to be introduced among the laity, and was reputed honourable. The functions of civil life were attended to. The talents requifite for difcharging them were cultivated. A new road was opened to wealth and eminence. The arts and virtues of peace were placed in their proper rank, and received their due recompence [CC].

The fpirit of chivalry introduces more liberal fentiments, and more generous manners.

VIII. WHILE improvements fo important with refpect to the ftate of fociety and the adminiftration of juftice, gradually made progrefs in Europe, fentiments more liberal and generous had begun to animate the nobles. Thefe were infpired by the fpirit of Chivalry, which, though confidered, commonly, as a wild inftitution, the effect of

[CC] NOTE XXVI.

caprice,

caprice, and the ſource of extravagance, aroſe naturally from the ſtate of ſociety at that period, and had a very ſerious influence in refining the manners of the European nations. The feudal ſtate was a ſtate of perpetual war, rapine, and anarchy; during which the weak and unarmed were expoſed every moment to inſults or injuries. The power of the ſovereign was too limited to prevent theſe wrongs; and the adminiſtration of juſtice too feeble to redreſs them. There was ſcarcely any protection againſt violence and oppreſſion, but what the valour and generoſity of private perſons afforded. The ſame ſpirit of enterprize which had prompted ſo many gentlemen to take arms in defence of the oppreſſed pilgrims in Paleſtine, incited others to declare themſelves the patrons and avengers of injured innocence at home. When the final reduction of the Holy Land under the dominion of Infidels put an end to theſe foreign expeditions, the latter was the only employment left for the activity and courage of adventurers. To check the inſolence of overgrown oppreſſors; to ſuccour the diſtreſſed; to reſcue the helpleſs from captivity; to protect, or to avenge women, orphans, and eccleſiaſtics, who could not bear arms in their own defence; to redreſs wrongs, and to remove grievances; were deemed acts of the higheſt proweſs and merit. Valour, humanity, courteſy, juſtice, honour, were the characteriſtic qualities of chivalry. To theſe were added religion, which mingled itſelf with every paſſion and inſtitution during the middle ages,

SECT. I.

Origin of Chivalry.

SECT. I. ages, and by infusing a large proportion of enthusiastic zeal, gave them such force, as carried them to romantic excess. Men were trained to knighthood by a long previous discipline; they were admitted into the order by solemnities no less devout than pompous; every person of noble birth courted that honour; it was deemed a distinction superior to royalty; and monarchs were proud to receive it from the hands of private gentlemen.

Its beneficial effects.

THIS singular institution, in which valour, gallantry, and religion, were so strangely blended, was wonderfully adapted to the taste and genius of martial nobles; and its effects were soon visible in their manners. War was carried on with less ferocity, when humanity came to be deemed the ornament of knighthood no less than courage. More gentle and polished manners were introduced, when courtesy was recommended as the most amiable of knightly virtues. Violence and oppression decreased, when it was reckoned meritorious to check and to punish them. A scrupulous adherence to truth, with the most religious attention to fulfil every engagement, became the distinguishing characteristic of a gentleman, because chivalry was regarded as the school of honour, and inculcated the most delicate sensibility with respect to that point. The admiration of these qualities, together with the high distinctions and prerogatives conferred on knighthood in every part of Europe, inspired persons of noble birth on some

ſome occaſions with a ſpecies of military fanaticiſm, and led them to extravagant enterprizes. But they imprinted deeply in their minds the principles of generoſity and honour. Theſe were ſtrengthened by every thing that can affect the ſenſes, or touch the heart. The wild exploits of thoſe romantic knights who ſallied forth in queſt of adventures, are well known, and have been treated with proper ridicule. The political and permanent effects of the ſpirit of chivalry have been leſs obſerved. Perhaps, the humanity which accompanies all the operations of war, the refinements of gallantry, and the point of honour, the three chief circumſtances which diſtinguiſh modern from ancient manners, may be aſcribed in a great meaſure to this whimſical inſtitution, ſeemingly of little benefit to mankind. The ſentiments which chivalry inſpired, had a wonderful influence on manners and conduct during the twelfth, thirteenth, fourteenth, and fifteenth centuries. They were ſo deeply rooted, that they continued to operate after the vigour and reputation of the inſtitution itſelf began to decline. Some conſiderable tranſactions, recorded in the following hiſtory, reſemble the adventurous exploits of chivalry, rather than the well regulated operations of ſound policy. Some of the moſt eminent perſonages, whoſe characters will be delineated, were ſtrongly tinctured with this romantic ſpirit. Francis I. was ambitious to diſtinguiſh himſelf by all the qualities of an accompliſhed knight, and en-

 deavoured

SECT. I. deavoured to imitate the enterprizing genius of chivalry in war, as well as its pomp and courtesy during peace. The fame which he acquired by these splendid actions, so far dazzled his more temperate rival, that he departed on some occasions from his usual prudence and moderation, and emulated Francis in deeds of prowess, or of gallantry [DD].

The progress of science has great influence on the manners and character of men.

IX. THE progress of science, and the cultivation of literature, had considerable effect in changing the manners of the European nations, and introducing that civility and refinement by which they are now distinguished. At the time when their Empire was overturned, the Romans, though they had lost that correct taste which has rendered the productions of their ancestors the standards of excellence, and models for imitation to succeeding ages, still preserved their love of letters, and cultivated the arts with great ardour. But rude barbarians were so far from being struck with any admiration of these unknown accomplishments, that they despised them. They were not arrived at that state of society, in which those faculties of the human mind, that have beauty and elegance for their objects, begin to unfold themselves. They were strangers to all those wants and desires which are the parents of ingenious invention; and as they did not comprehend either the merit or utility of the Roman arts, they destroyed the mo-

Ignorance of the middle ages.

[DD] NOTE XXVII.

Sect. I.

numents of them, with induſtry not inferior to that with which their poſterity have ſince ſtudied to preſerve, or to recover them. The convulſions occaſioned by their ſettlement in the Empire; the frequent as well as violent revolutions in every kingdom which they eſtabliſhed; together with the interior defects in the form of government which they introduced, baniſhed ſecurity and leiſure; prevented the growth of taſte, or the culture of ſcience; and kept Europe, during ſeveral centuries, in that ſtate of ignorance which has been already deſcribed. But the events and inſtitutions which I have enumerated, produced great alterations in ſociety. As ſoon as their operation, in reſtoring liberty and independence to one part of the community, began to be felt; as ſoon as they began to communicate to all the members of ſociety ſome taſte of the advantages ariſing from commerce, from public order, and from perſonal ſecurity, the human mind became conſcious of powers which it did not formerly perceive, and fond of occupations or purſuits of which it was formerly incapable. Towards the beginning of the twelfth century, we diſcern the firſt ſymptoms of its awakening from that lethargy in which it had been long ſunk, and obſerve it turning with curioſity and attention towards new objects.

The firſt literary efforts ill-directed, and the cauſes of this.

The firſt literary efforts, however, of the European nations in the middle ages, were extremely ill-directed. Among nations, as well as individuals, the powers of imagination attain ſome degree of

Sect. I. of vigour before the intellectual faculties are much exercised in speculative or abstract disquisition. Men are poets before they are philosophers. They feel with sensibility, and describe with force, when they have made but little progress in investigation or reasoning. The age of Homer and of Hesiod long preceded that of Thales, or of Socrates. But, unhappily for literature, our ancestors deviating from this course which nature points out, plunged at once into the depths of abstruse and metaphysical inquiry. They had been converted to the Christian faith, soon after they settled in their new conquests. But they did not receive it pure. The presumption of men had added to the simple and instructive doctrines of Christianity, the theories of a vain philosophy, that attempted to penetrate into mysteries, and to decide questions which the limited faculties of the human mind are unable to comprehend, or to resolve. These over-curious speculations were incorporated with the system of religion, and came to be considered as the most essential part of it. As soon, then, as curiosity prompted men to inquire and to reason, these were the subjects which first presented themselves, and engaged their attention. The scholastic theology, with its infinite train of bold disquisitions, and subtile distinctions concerning points which are not the object of human reason, was the first production of the spirit of enquiry after it began to resume some degree of activity and vigour in Europe. It was not this circumstance alone that gave

ſuch a wrong turn to the minds of men, when they began again to exerciſe talents which they had ſo long neglected. Moſt of the perſons who attempted to revive literature in the twelfth and thirteenth centuries, had received inſtruction, or derived their principles of ſcience from the Greeks in the eaſtern Empire, or from the Arabians in Spain and Africa. Both theſe people, acute and inquiſitive to exceſs, corrupted thoſe ſciences which they cultivated. The former rendered theology a ſyſtem of ſpeculative refinement, or of endleſs controverſy. The latter communicated to philoſophy a ſpirit of metaphyſical and frivolous ſubtlety. Miſled by theſe guides, the perſons who firſt applied to ſcience were involved in a maze of intricate inquiries. Inſtead of allowing their fancy to take its natural range, and to produce ſuch works of invention as might have improved their taſte, and refined their ſentiments; inſtead of cultivating thoſe arts which embelliſh human life, and render it comfortable; they were fettered by authority, they were led aſtray by example, and waſted the whole force of their genius in ſpeculations as unavailing as they were difficult.

They had, however, conſiderable effects.

But fruitleſs and ill-directed as theſe ſpeculations were, their novelty rouzed, and their boldneſs intereſted the human mind. The ardour with which men purſued theſe uninviting ſtudies, was aſtoniſhing. Genuine philoſophy was never cultivated, in any enlightened age, with more zeal. Schools, upon the model of thoſe inſtituted by Charlemagne,

were

SECT. I. were opened in every cathedral, and almoſt in every monaſtery of note. Colleges and univerſities were erected, and formed into communities or corporations, governed by their own laws, and inveſted with ſeparate and extenſive juriſdiction over their own members. A regular courſe of ſtudies was planned. Privileges of great value were conferred on maſters and ſcholars. Academical titles and honours of various kinds were invented, as a recompence for both. Nor was it in the ſchools alone that ſuperiority in ſcience led to reputation and authority; it became an object of reſpect in life, and advanced ſuch as required it to a rank of no inconſiderable eminence. Allured by all theſe advantages, an incredible number of ſtudents reſorted to theſe new ſeats of learning, and crowded with eagerneſs into that new path which was opened to fame and diſtinction.

A circumſtance which prevented their being more extenſive.

BUT how conſiderable ſoever theſe firſt efforts may appear, there was one circumſtance which prevented the effects of them from being as extenſive as they ought to have been. All the languages in Europe, during the period under review, were barbarous. They were deſtitute of elegance, of force, and even of perſpicuity. No attempt had been hitherto made to improve or to poliſh them. The Latin tongue was conſecrated by the church to religion. Cuſtom, with authority ſcarcely leſs ſacred, had appropriated it to literature. All the ſciences cultivated in the twelfth and thirteenth centuries, were taught in Latin. All books with

reſpect to them were written in that language. To have treated of any important ſubject in a modern language, would have been deemed a degradation of it. This confined ſcience within a very narrow circle. The learned alone were admitted into the temple of knowledge; the gate was ſhut againſt all others, who were allowed to remain involved in their former darkneſs and ignorance.

Its influence on manners merits attention.

But though ſcience was thus prevented, during ſeveral ages, from diffuſing itſelf through ſociety, and its influence was ſo much circumſcribed; the progreſs which it made may be mentioned, nevertheleſs, among the great cauſes which contributed to introduce a change of manners into Europe. That ardent, though ill-judged ſpirit of enquiry which I have deſcribed, occaſioned a fermentation of mind which put ingenuity and invention in motion, and gave them vigour. It led men to a new employment of their faculties, which they found to be agreeable as well as intereſting. It accuſtomed them to exerciſes and occupations which tended to ſoften their manners, and to give them ſome reliſh for thoſe gentle virtues, which are peculiar to nations among whom ſcience hath been cultivated with ſucceſs [EE].

The progreſs of commerce had great influence on manners and government.

X. The progreſs of commerce had conſiderable influence in poliſhing the manners of the European nations, and in leading them to order, equal laws,

[EE] NOTE XXVIII.

and

SECT. I.

and humanity. The wants of men, in the original and most simple state of society, are so few, and their desires so limited, that they rest contented with the natural productions of their climate and soil, or with what they can add to these by their own rude industry. They have no superfluities to dispose of, and few necessities that demand a supply. Every little community subsisting on its own domestick stock, and satisfied with it, is either unacquainted with the states around it, or at variance with them. Society and manners must be considerably improved, and many provisions must be made for public order and personal security, before a liberal intercourse can take place between different nations. We find, accordingly, that the first effect of the settlement of the barbarians in the Empire, was to divide those nations which the Roman power had united. Europe was broken into many separate communities. The intercourse between these divided states, ceased almost totally during several centuries. Navigation was dangerous in seas infested by pirates; nor could strangers trust to a friendly reception in the ports of uncivilized nations. Even between distant parts of the same kingdom, the communication was rare and difficult. The lawless rapine of banditti, together with the avowed exactions of the nobles, scarcely less formidable and oppressive, rendered a journey of any length a perilous enterprize. Fixed to the spot in which they resided, the greater part of the inhabitants of Europe lost, in a great measure, the knowledge of remote regions, and were

Low state of commerce in the middle ages.

unacquainted

unacquainted with their names, their ſituations, their climates, and their commodities [FF]. SECT. I.

Causes of its revival.

VARIOUS cauſes, however, contributed to revive the ſpirit of commerce, and to renew, in ſome degree, the intercourſe between different nations. The Italians, by their connection with Conſtantinople and other cities of the Greek empire, had preſerved in their own country ſome reliſh for the precious commodities and curious manufactures of the Eaſt. They communicated ſome knowledge of theſe to the countries contiguous to Italy. But this commerce was extremely limited, nor was the intercourſe which it occaſioned between different nations conſiderable. The Cruſades, by leading multitudes from every corner of Europe into Aſia, opened a more extenſive communication between the Eaſt and Weſt, which ſubſiſted for two centuries; and though the object of theſe expeditions was conqueſt and not commerce; though the iſſue of them proved as unfortunate, as the motives for undertaking them were wild and enthuſiaſtic, their commercial effects, as hath been ſhewn, were both beneficial and permanent. During the continuance of the Cruſades, the great cities in Italy, and in other countries of Europe, acquired liberty, and together with it ſuch privileges as rendered them reſpectable and independent communities. Thus, in every ſtate there was formed a new order of citizens, to whom commerce preſented itſelf as their proper object, and opened to

[FF] NOTE XXIX.

them

SECT. I. them a certain path to wealth and dignity. Soon after the close of the Holy war, the mariner's compass was invented, which, by rendering navigation more secure as well as more adventrous, facilitated the communication between remote nations, and brought them nearer to each other.

First among the Italians. THE Italian States, during the same period, established a regular commerce with the East in the ports of Egypt, and drew from thence all the rich products of the Indies. They introduced into their own territories manufactures of various kinds, and carried them on with great ingenuity and vigour. They attempted new arts; and transplanted from warmer climates, to which they had been hitherto deemed peculiar, several natural productions which now furnish the materials of a lucrative and extended commerce. All these commodities, whether imported from Asia, or produced by their own skill, they disposed of to great advantage among the other people of Europe, who began to acquire some taste of elegance unknown to their ancestors, or despised by them. During the twelfth and thirteenth centuries, the commerce of Europe was almost entirely in the hands of the Italians, more commonly known in those ages by the name of Lombards. Companies or societies of Lombard merchants settled in every different kingdom. They were taken under the immediate protection of the several governments. They enjoyed extensive privileges and immunities. The operation of the ancient barbarous laws concerning strangers,

ſtrangers, was ſuſpended with reſpect to them. They became the carriers, the manufacturers, and the bankers of all Europe. Sect. I.

Then by means of the Hanſeatick.

While the Italians, in the ſouth of Europe, cultivated trade with ſuch induſtry and ſucceſs, the commercial ſpirit awakened in the North towards the middle of the thirteenth century. As the nations around the Baltick were, at that time, extremely barbarous, and infeſted that ſea with their piracies, this obliged the cities of Lubeck and Hamburgh, ſoon after they began to open ſome trade with theſe people, to enter into a league of mutual defence. They derived ſuch advantages from this union, that other towns acceded to their confederacy, and, in a ſhort time, eighty of the moſt conſiderable cities ſcattered through thoſe vaſt countries which ſtretch from the bottom of the Baltick to Cologne on the Rhine, joined in the famous Hanſeatick league, which became ſo formidable, that its alliance was courted, and its enmity was dreaded by the greateſt monarchs. The members of this powerful aſſociation formed the firſt ſyſtematick plan of commerce known in the middle ages, and conducted it by common laws enacted in their general aſſemblies. They ſupplied the reſt of Europe with naval ſtores, and pitched on different towns, the moſt eminent of which was Bruges in Flanders, where they eſtabliſhed ſtaples in which their commerce was regularly carried on. Thither the Lombards brought the productions of

India,

SECT. I. India, together with the manufactures of Italy, and exchanged them for the more bulky, but not less useful commodities of the North. The Hanseatick merchants disposed of the cargoes which they received from the Lombards, in the ports of the Baltick, or carried them up the great rivers into the interior parts of Germany.

Commerce makes progress in the Netherlands;

THIS regular intercourse opened between the nations in the North and South of Europe, made them sensible of their mutual wants, and created such new and vast demands for commodities of every kind, that it excited among the inhabitants of the Netherlands a more vigorous spirit in carrying on the two great manufactures of wool and flax, which seem to have been considerable in that country as far back as the age of Charlemagne. As Bruges became the center of communication between the Lombard and Hanseatick merchants, the Flemings traded with both in that city to such extent as well as advantage, as spread among them a general habit of industry, which long rendered Flanders and the adjacent provinces the most opulent, the most populous, and best cultivated countries in Europe.

And in England.

STRUCK with the flourishing state of these provinces, of which he discerned the true cause, Edward III. of England endeavoured to excite a spirit of industry among his own subjects, who, blind to the advantages of their situation, and ignorant of

of the ſource from which opulence was deſtined to flow into their country, totally neglected commerce, and did not even attempt thoſe manufactures, the materials of which they furniſhed to foreigners. By alluring Flemiſh artiſans to ſettle in his dominions, as well as by many wiſe laws for the encouragement and regulation of trade, Edward gave a beginning to the woollen manufactures of England, and firſt turned the active and enterprizing genius of his people towards thoſe arts which have raiſed the Engliſh to the higheſt rank among commercial nations. SECT. I.

THIS increaſe of commerce, and of intercourſe between nations, how inconſiderable ſoever it may appear in reſpect of their rapid and extenſive progreſs during the laſt and preſent age, ſeems vaſt, when we compare it with the ſtate of both in Europe previous to the twelfth century. It did not fail of producing great effects. Commerce tends to wear off thoſe prejudices which maintain diſtinction and animoſity between nations. It ſoftens and poliſhes the manners of men. It unites them by one of the ſtrongeſt of all ties, the deſire of ſupplying their mutual wants. It diſpoſes them to peace, by eſtabliſhing in every ſtate an order of citizens bound by their intereſt to be the guardians of publick tranquillity. As ſoon as the commercial ſpirit begins to acquire vigour, and to gain an aſcendant in any ſociety, we diſcover a new genius in its policy, its alliances, its wars, and its negociations. The beneficial effects of this.

SECT. I. Conſpicuous proofs of this occur in the hiſtory of the Italian States, of the Hanſeatick league, and the cities of the Netherlands during the period under review. In proportion as commerce made its way into the different countries of Europe, they ſucceſſively turned their attention to thoſe objects, and adopted thoſe manners, which occupy and diſtinguiſh poliſhed nations [GG].

[GG] NOTE XXX.

A
VIEW
OF THE
PROGRESS OF SOCIETY
IN
EUROPE,
FROM THE
SUBVERSION OF THE ROMAN EMPIRE,
TO THE
BEGINNING OF THE SIXTEENTH CENTURY.

SECTION II.

View of the Progress of Society in Europe, with respect to the command of the national force requisite in foreign operations.

SECT. II.

State of society greatly improved at the beginning of the fifteenth century.

SUCH are the events and institutions, which by their powerful operation contributed, gradually, to introduce more regular government and more polished manners into the various nations of Europe. When we survey the state of society, or the character of individuals, at the opening of the

 fifteenth

SECT. II. fifteenth century, and then turn back to view the condition of both at the time when the barbarous tribes which overturned the Roman power completed their ſettlement in their new conqueſts, the progreſs which mankind had made towards order and refinement will appear immenſe.

Still defective with reſpect to the command of the national force.

GOVERNMENT, however, was ſtill far from having attained that ſtate, in which extenſive monarchies act with united vigour, or carry on great undertakings with perſeverance and ſucceſs. Small tribes or communities, even in their rudeſt ſtate, may operate in concert, and exert their utmoſt force. They are excited to act not by the diſtant objects, and ſubtile ſpeculations, which intereſt or affect men in poliſhed ſocieties, but by their preſent feelings. The inſults of an enemy kindle reſentment; the ſucceſs of a rival tribe awakens emulation: theſe paſſions communicate from breaſt to breaſt, and all the members of the community, with united ardour, ruſh into the field in order to gratify their revenge, or to acquire diſtinction. But in widely extended ſtates, ſuch as the great kingdoms of Europe at the beginning of the fifteenth century, where there is little intercourſe between the diſtant members of the community, and where every great enterprize requires previous concert and long preparation, nothing can rouſe and call forth their united ſtrength, but the abſolute command of a Deſpot, or the powerful influence of regular policy. Of the former the vaſt

Empires

Empires in the Eaſt are an example; the irreſiſtible mandate of the Sovereign reaches the moſt remote provinces of his dominions, and compels whatever number of his ſubjects he is pleaſed to ſummon, to follow his ſtandard. The kingdoms of Europe, in the preſent age, are an inſtance of the latter; the Prince, by the leſs violent, but no leſs effectual operation of laws and a well regulated government, is enabled to avail himſelf of the whole force of his ſtate, and to employ it in enterprizes which require ſtrenuous and perſevering efforts.

The power of Monarchs very limited.

BUT, at the opening of the fifteenth century, the political conſtitution in all the kingdoms of Europe was very different from either of theſe ſtates of government. The ſeveral monarchs, though they had ſomewhat enlarged the boundaries of prerogative by ſucceſsful encroachments on the immunities and privileges of the nobility, were poſſeſſed of an authority extremely limited. The laws and interior police of kingdoms, though much improved by the various events and regulations which I have enumerated, were ſtill feeble and imperfect. In every country, a numerous body of nobles, ſtill formidable notwithſtanding the various expedients employed to depreſs them, watched all the motions of their ſovereign with a jealous attention, which ſet bounds to his ambition, and either prevented his forming ſchemes of

SECT. II. extenſive enterprize, or thwarted the execution of them.

Their revenues ſmall.

THE ordinary revenues of every Prince were ſo extremely ſmall as to be inadequate to any great undertaking. He depended for extraordinary ſupplies on the good will of his ſubjects, who granted them often with a reluctant and always with a ſparing hand.

Their armies unfit for conqueſt.

As the revenues of Princes were inconſiderable, the armies which they could bring into the field were unfit for long and effectual ſervice. Inſtead of being able to employ troops trained to ſkill in arms, and to military ſubordination, by regular diſcipline, Monarchs were obliged to depend on ſuch forces as their vaſſals conducted to their ſtandard in conſequence of their military tenures. Theſe, as they were bound to remain under arms only for a ſhort time, could not march far from their uſual place of reſidence, and being more attached to the lord of whom they held, than to the Sovereign whom they ſerved, were often as much diſpoſed to counteract as to forward his ſchemes. Nor were they, even if they had been more ſubject to the command of the monarch, proper inſtruments to carry into execution any great and arduous enterprize. The ſtrength of an army formed either for conqueſt or defence lies in infantry. To the ſtability and diſcipline of their legions, conſiſting chiefly of infantry, the

Romans

Romans during the times of the republick were indebted for all their victories; and when their descendants, forgetting the institutions which had led them to universal dominion, so far altered their military system as to place their principal confidence in a numerous cavalry, the undisciplined impetuosity of the barbarous nations who fought mostly on foot, was sufficient, as I have already observed, to overcome them. These nations soon after they settled in their new conquests, uninstructed by the fatal error of the Romans, relinquished the customs of their ancestors, and converted the chief force of their armies into cavalry. Among the Romans this change was occasioned by the effeminacy of their troops, who could not endure the fatigues of service, which their more virtuous and hardy ancestors sustained with ease. Among the people who established the new monarchies into which Europe was divided, this innovation in military discipline seems to have flowed from the pride of the nobles, who scorning to mingle with persons of inferior rank, aimed at being distinguished from them in the field as well as during peace. The institution of chivalry, and the frequency of tournaments, in which knights, in complete armour, entered the lists on horseback with extraordinary splendour, displaying amazing address, and force, and valour, brought cavalry into still greater esteem. The fondness for that service increased to such a degree, that, during the thirteenth and fourteenth centuries, the armies

SECT. II. of Europe were composed almost entirely of cavalry. No gentleman would appear in the field but on horseback. To serve in any other manner he would have deemed derogatory to his rank. The cavalry, by way of distinction, was called, *The battle*, and on it alone depended the fate of every action. The infantry, collected from the dregs and refuse of the people, ill armed and worse disciplined, was of no account.

They are incapable of forming any general or extensive plan of operation.

As these circumstances rendered the operations of particular kingdoms less considerable and less vigorous, so they long kept the Princes of Europe from giving such attention to the schemes and transactions of their neighbours, as led them to form any regular system of publick security. They prevented them from uniting in confederacy, or from acting with concert, in order to establish such a distribution and balance of power, as should hinder any state from rising to a superiority, which might endanger the general liberty and independence. During several centuries, the nations of Europe appear to have considered themselves as separate societies, scarcely connected together by any common interest, and little concerned in each others affairs or operations. An extensive commerce did not afford them an opportunity of observing and penetrating into the schemes of every different state. They had not ambassadors residing constantly in every court to watch and give early intelligence of all its motions. The expectation

of

of remote advantages, or the profpect of diftant and contingent evils, were not fufficient to excite nations to take arms. They only, who were within the fphere of immediate danger, and unavoidably expofed to injury or infult, thought themfelves interefted in any conteft, or bound to take precautions for their own fafety. SECT. II.

They were little connected with each other.

WHOEVER records the tranfactions of any of the more confiderable European ftates during the two laft centuries, muft write the hiftory of Europe. Its various kingdoms, throughout that period, have been formed into one great fyftem, fo clofely united, that each holding a determinate ftation, the operations of one are fo felt by all, as to influence their counfels and regulate their meafures. But previous to the fifteenth century, unlefs when vicinity of territory rendered the occafions of difcord frequent and unavoidable, or when national emulation fomented or embittered the fpirit of hoftility, the affairs of different countries are feldom interwoven. In each kingdom of Europe great events and revolutions happened, which the other powers beheld with almoft the fame indifference as if they had been unintereftea fpectators, to whom the effect of thefe tranfactions could never extend.

A confirmation of this from the affairs of France.

DURING the violent ftruggles between France and England, and notwithftanding the alarming progrefs which was made towards rendering one Prince

SECT. II. Prince the master of both these kingdoms, hardly one measure which can be considered as the result of a sagacious and prudent policy, was formed in order to guard against an event so fatal to Europe. The Dukes of Burgundy and Bretagne, whom their situation would not permit to remain neutral, engaged, it is true, in the contest; but they more frequently took the part to which their passions prompted them, than that which a just discernment of the danger which threatened themselves and the tranquillity of Europe should have pointed out. The other Princes, seemingly unaffected by the alternate successes of the contending parties, left them to decide the quarrel, or interposed only by feeble and ineffectual negociations.

From those of Spain.

NOTWITHSTANDING the perpetual hostilities in which the various kingdoms of Spain were engaged during several centuries, and the successive occurrences which visibly tended to unite that part of the continent into one great monarchy, the Princes of Europe scarcely took a single step, which discovers that they gave any attention to that important event. They permitted a power to arise imperceptibly, and to acquire strength there, which soon became formidable to all its neighbours.

From those of Germany.

AMIDST the violent convulsions with which the spirit of domination in the See of Rome, and the turbulent ambition of the German nobles, agitated the Empire, neither the authority of the Popes, seconded by all their artifices and intrigues, nor the

the solicitations of the Emperors, could induce any of the powerful monarchs in Europe to engage in their quarrel, or to avail themselves of many favourable opportunities of interposing with effect and advantage.

This inactivity occasioned entirely by the state of government.

This amazing inactivity, during transactions so interesting, is not to be imputed to any incapacity of discerning their political consequences. The power of judging with sagacity, and of acting with vigour, is the portion of men in every age. The Monarchs who reigned in the different kingdoms of Europe during several centuries were not blind to their particular interest, negligent of the publick safety, or strangers to the method of securing both. If they did not adopt that salutary system, which teaches modern politicians to take the alarm at the prospect of distant dangers, which prompts them to check the first encroachments of any formidable power, and which renders each state the guardian, in some degree, of the rights and independence of all its neighbours, this was owing entirely to such imperfections and disorders in the civil government of each country, as made it impossible for sovereigns to act suitably to those ideas which the posture of affairs, and their own observation, must have suggested.

Events happened during the 15th century which render the efforts of na-

But during the course of the fifteenth century, various events happened, which, by giving Princes more entire command of the force in their respective dominions, rendered their operations more vigorous

SECT. II. tions more powerful and extensive.

vigorous and extenſive. In conſequence of this, the affairs of different kingdoms becoming more frequently as well as more intimately connected, they were gradually accuſtomed to act in concert and confederacy, and were inſenſibly prepared for forming a ſyſtem of policy, in order to eſtabliſh or to preſerve ſuch a balance of power as was moſt conſiſtent with the general ſecurity. It was during the reign of Charles the fifth, that the ideas, on which this ſyſtem is founded, firſt came to be fully underſtood. It was then, that the maxims by which it has been uniformly maintained ſince that æra were univerſally adopted. On this account, a view of the cauſes and events which contributed to eſtabliſh a plan of policy more ſalutary and extenſive than any that has taken place in the conduct of human affairs, is not only a neceſſary introduction to the following work, but is a capital object in the hiſtory of Europe.

The firſt of theſe was the depriving the Engliſh of their territories on the continent.

THE firſt event, that occaſioned any conſiderable alteration in the arrangement of affairs in Europe, was the annexation of the extenſive territories, which England poſſeſſed on the continent, to the crown of France. While the Engliſh were maſters of ſeveral of the moſt fertile and opulent provinces in France, and a great part of its moſt martial inhabitants was bound to follow their ſtandard, an Engliſh monarch conſidered himſelf rather as the rival, than as the vaſſal of the ſovereign of whom he held. The Kings of France, circumſcribed

ſcribed and thwarted in their ſchemes and operations by an adverſary no leſs jealous than formidable, durſt not venture upon any enterprize of importance or of difficulty. The Engliſh were always at hand, ready to oppoſe them. They diſputed even their right to their crown, and being able to penetrate, with eaſe, into the heart of the kingdom, could arm againſt them thoſe very hands which ought to have been employed in their defence. Timid counſels, and feeble efforts were natural to monarchs in ſuch a ſituation. France, diſmembered and over-awed, could not attain its proper ſtation in the ſyſtem of Europe. But the death of Henry V. of England, happily for France, and not unfortunately for his own country, delivered the French from the calamity of having a foreign maſter ſeated on their throne. The weakneſs of a long minority, the diſſenſions in the Engliſh court, together with the unſteady and languid conduct which theſe occaſioned, afforded the French a favourable opportunity of recovering the territories which they had loſt. The native valour of the French nobility heightened to an enthuſiaſtick confidence, by a ſuppoſed interpoſition of heaven in their behalf; conducted in the field by ſkilful leaders; and directed in the cabinet by a prudent monarch; was exerted with ſuch vigour and ſucceſs, during this favourable juncture, as not only wreſted from the Engliſh their new conqueſts, but ſtript them of their ancient poſſeſſions in France, and reduced them within the

SECT. II. the narrow precincts of Calais, and its petty territory.

The effect of this on increasing the power of the French monarchy.

As soon as so many considerable provinces were re-united to their dominions, the Kings of France, conscious of this acquisition of strength, began to form bolder schemes of interior policy, as well as of foreign operations. They immediately became formidable to their neighbours, who began to fix their attention on their measures and motions, the importance of which they fully perceived. From this æra, France, possessed of the advantages which it derives from the situation and contiguity of its territories, as well as from the number and valour of its people, rose to new influence in Europe, and was the first power in a condition to give alarm to the jealousy or fears of the states around it.

On the state of the military force in the nation.

NOR was France indebted for this increase of importance merely to the re-union of the provinces which had been torn from it. A circumstance attended the recovery of these, which, though less considerable, and less observed, contributed not a little to give additional vigour and decision to all the efforts of that monarchy. During the obstinate struggles between France and England, all the defects of the military system under the feudal government were sensibly felt. A war of long continuance languished, when carried on by troops bound and accustomed to keep the field only for

 a few

a few weeks. Armies, composed chiefly of heavy armed cavalry, were unfit either for the attack or the defence of the many towns and castles, which it became necessary to guard or to reduce. In order to obtain such permanent and effective force, as became requisite during these lengthened contests, the Kings of France took into their pay considerable bands of mercenary soldiers, levied sometimes among their own subjects, and sometimes in foreign countries. But as the feudal policy provided no sufficient fund for such extraordinary service, these adventurers were dismissed at the close of every campaign, or upon any prospect of accommodation; and having been little accustomed to the restraints of discipline, they frequently turned their arms against the country which they had been hired to defend, and desolated it with no less cruelty than its foreign enemies.

It occasions the introduction of standing armies.

A BODY of troops kept constantly on foot, and regularly trained to military subordination, would have supplied what was wanting in the feudal constitution, and have furnished Princes with the means of executing enterprizes, to which they were then unequal. Such an establishment, however, was so repugnant to the genius of feudal policy, and so incompatible with the privileges and pretensions of the nobility, that during several centuries no monarch was either so bold, or so powerful, as to venture on any step towards introducing it. At last, Charles VII. availing himself of the reputation which he had acquired by his successes against

SECT. II. against the English, and taking advantage of the impressions of terror which such a formidable enemy had left upon the minds of his subjects, executed that which his predecessors durst not attempt. Under pretence of keeping always on foot a force sufficient to defend the kingdom against any sudden invasion of the English, he, at the time when A. D. 1445. he disbanded his other troops, retained under arms a body of nine thousand cavalry, and of sixteen thousand infantry. He appropriated funds for the regular payment of these; he stationed them in different places of the kingdom, according to his pleasure; and appointed the officers, who commanded and disciplined them. The prime nobility courted this service, in which they were taught to depend on their sovereign, to execute his orders, and to look up to him as the judge and rewarder of their merit. The feudal militia, composed of the vassals whom the nobles could call out to follow their standard, as it was in no degree comparable to a body of soldiers regularly trained to war, sunk gradually in reputation. The strength of armies came to be estimated only by the number of disciplined men which they contained. In less than a century, the nobles and their military tenants, though sometimes summoned to the field, according to ancient form, were considered as an incumbrance upon the troops with which they acted; and were viewed with contempt by soldiers accustomed to the vigorous and steady operations of regular service.

Sect. II.

Thus the regulations of Charles the ſeventh, by eſtabliſhing the firſt ſtanding army known in Europe, occaſioned an important revolution in its affairs and policy. By depriving the nobles of that direction of the military force of the ſtate, which had raiſed them to ſuch high authority and importance, a deep wound was given to the feudal ariſtocracy, in that part where its power ſeemed to be moſt complete.

The effects of this.

France, by forming this body of regular troops, at a time when there was ſcarcely a ſquadron or company kept in conſtant pay in any other part of Europe, acquired ſuch advantages, either for attack or defence, over its neighbours, that ſelf-preſervation made it neceſſary for them to imitate its example. Mercenary troops were introduced into all the conſiderable kingdoms on the continent. They gradually became the only military force that was employed or truſted. It has long been the chief object of policy to increaſe and to ſupport them. It has long been the great aim of Princes and miniſters to diſcredit and to annihilate all other means of national activity or defence.

As the Kings of France got the ſtart of other powers in eſtabliſhing a military force in their dominions, which enabled them to carry on foreign operations with more vigour, and to greater extent, ſo they were the firſt who effectually broke the feudal ariſtocracy, and humbled the great vaſ-

The monarchs of France encouraged to extend their prerogative.

Sect. II. ſals of the crown, who by their exorbitant power had long circumſcribed the royal prerogative within very narrow limits, and had rendered all the efforts of the monarchs of Europe inconſiderable. Many things concurred to undermine, gradually, the power of the feudal ariſtocracy in France. The wealth and property of the nobility were greatly impaired during the long wars which the kingdom was obliged to maintain with the Engliſh. The extraordinary zeal with which they exerted themſelves in defence of their country againſt its ancient enemies, exhauſted the fortunes of ſome great families. As almoſt every province in the kingdom was, in its turn, the ſeat of war, the lands of others were expoſed to the depredations of the enemy, were ravaged by the mercenary troops which their ſovereigns hired occaſionally, but could not pay, or were deſolated with rage ſtill more deſtructive by the peaſants, in their different inſurrections. At the ſame time, the neceſſities of government having forced their Kings upon the deſperate expedient of making great and ſudden alterations in the current coin of the kingdom, the fines, quit-rents, and other payments fixed by ancient cuſtom, ſunk much in value, and the revenues of a fief were reduced far below the ſum which it had once yielded. During their conteſts with the Engliſh, in which a generous nobility courted every ſtation where danger appeared, or honour could be gained, many families of note became extinct, and their fiefs were reunited to the crown. Other fiefs, in a long courſe of years, fell to female heirs,

heirs, and were divided among them; were diminished by profuse donations to the church, or were broken and split by the succession of remote collateral heirs [s]. SECT. II.

ENCOURAGED by these manifest symptoms of decline in that body which he wished to depress, Charles VII. during the first interval of peace with England, made several efforts towards establishing the regal prerogative on the ruins of the aristocracy. But his obligations to the nobles were so many, as well as recent, and their services in recovering the kingdom so splendid, as made it necessary for him to proceed with moderation and caution. Such, however, was the authority which the crown had acquired by the progress of its arms against the English, and so much was the power of the nobility diminished, that, without any opposition, he soon made innovations of great consequence in the constitution. He not only established that formidable body of regular troops, which has been mentioned, but he was the first monarch of France who, by his royal edict, without the concurrence of the States-general of the kingdom, levied an extraordinary subsidy on his people. He prevailed likewise with his subjects, to render several taxes perpetual, which had formerly been imposed occasionally, and exacted during a short time. By means of all these, he acquired such an increase of power, and extended

The progress of the royal power under Charles VII.

A. D. 1440.

[s] Boulainvilliers Histoire de Government de France, Lettre xii.

SECT. II. his prerogative so far beyond its ancient limits, that, from being the most dependent Prince who had ever sat upon the throne of France, he came to possess, during the latter years of his reign, a degree of authority which none of his predecessors had enjoyed for several ages [t].

Under Louis XI.

THAT plan of humbling the nobility which Charles formed, his son Louis XI. carried on with a bolder spirit, and with greater success. Louis was formed by nature to be a tyrant; and at whatever period he had been called to ascend the throne, his reign must have abounded with schemes to oppress his people, and to render his own power absolute. Subtle, unfeeling, cruel; a stranger to every principle of integrity, and regardless of decency, he scorned all the restraints which a sense of honour, or the desire of fame, impose even upon ambitious men. Sagacious, at the same time, to discern his true interest, and influenced by that alone, he was capable of pursuing it with a persevering industry, and of adhering to it with a systematic spirit, from which no object could divert, and no danger could deter him.

His measures for humbling the nobility;

THE maxims of his administration were as profound as they were fatal to the privileges of the nobility. He filled all the departments of government with new men, and often with persons whom

[t] Histoire de France par Velly & Villaret, tom. xv. 331, &c. 389. tom. xvi. 324. Variations de la Monarchie Francoise, tom. iii. 162.

he

he called from the loweſt as well as moſt deſpiſed functions in life, and raiſed at pleaſure to ſtations of great power or truſt. Theſe were his only confidents, whom he conſulted in forming his plans, and to whom he committed the execution of them: While the nobles, accuſtomed to be the companions, the favourites, and the miniſters of their ſovereigns, were treated with ſuch ſtudied and mortifying neglect, that if they would not ſubmit to follow a court, in which they appeared without any ſhadow of their ancient power, they were obliged to retire to their caſtles, where they remained unemployed and forgotten. Not ſatisfied with having rendered the nobles of leſs conſideration, by taking out of their hands the ſole direction of affairs, Louis added inſult to neglect; and by violating their moſt valuable privileges, endeavoured to degrade the order, and to reduce the members of it to the ſame level with other ſubjects. Perſons of the higheſt rank among them, if ſo bold as to oppoſe his ſchemes, or ſo unfortunate as to awaken the jealouſy of his capricious temper, were proſecuted with rigour, from which all who belonged to the order of nobility had hitherto been exempt; they were tried by judges who had no right to take cognizance of their actions; and were ſubjected to torture, or condemned to an infamous death, without regard to their birth or condition. The people, accuſtomed to ſee the blood of the moſt illuſtrious perſonages ſhed by the hands of the common executioner, to behold them ſhut up in dungeons, and carried

SECT. II. about in cages of iron, began to view the nobility with leſs reverence than formerly, and looked up with terror to the royal authority, which ſeemed to have humbled or annihilated every other power in the kingdom.

And of dividing them.

AT the ſame time, Louis, being afraid that oppoſition might rouze the nobles, whom the rigour of his government had intimidated, or that ſelf-preſervation might at laſt teach them to unite, dexterouſly ſcattered among them the ſeeds of diſcord; and induſtriouſly fomented thoſe ancient animoſities between the great families, which the ſpirit of jealouſy and emulation, natural to the feudal government, had originally kindled and ſtill kept alive. To accompliſh this, all the arts of intrigue, all the myſteries and refinements of his fraudulent policy were employed, and with ſuch ſucceſs, that at a juncture which required the moſt ſtrenuous efforts, as well as the moſt perfect union, the nobles never acted, except during one ſhort ſally of reſentment at the beginning of his reign, either with vigour or with concert.

He adds to the number of ſtanding forces.

As he ſtripped the nobility of their privileges, he added to the power and prerogative of the crown. In order to have at command ſuch a body of ſoldiers as might be ſufficient to cruſh any force that his diſaffected ſubjects could draw together, he not only kept on foot the regular troops which his father had raiſed, but took into his pay ſix thouſand Swiſs, at that time the beſt diſciplined

and

and moſt formidable infantry in Europe [u]. From the jealouſy natural to tyrants, he confided in theſe foreign mercenaries, as the moſt devoted inſtruments of oppreſſion, and the moſt faithful guardians of the power which he had acquired. That they might be ready to act on the ſhorteſt warning, he, during the latter years of his reign, kept a conſiderable body of them encamped in one place [w]. SECT. II.

GREAT funds were requiſite, not only to defray the expence of this additional eſtabliſhment, but to ſupply the ſums employed in the various enterprizes which the reſtleſs activity of his genius prompted him to undertake. But the prerogative that his father had aſſumed of levying taxes without the concurrence of the ſtates-general, which he was careful not only to retain but to extend, enabled him to provide in ſome meaſure for the increaſing charges of government. He augments the revenues of the crown.

WHAT his prerogative, enlarged as it was, could not furniſh, his addreſs procured. He was the firſt monarch in Europe who diſcovered the method of managing thoſe great aſſemblies, in which the feudal policy had veſted the power of granting ſubſidies and of impoſing taxes. He firſt taught other Princes the fatal art of beginning their attack on publick liberty, by corrupting the ſource from which it ſhould flow. By exerting all his His addreſs in managing the aſſembly of ſtates.

[u] Mem. de Comines, tom. i. 367. Dan. Hiſt. de la Milice Francoiſe, tom. i. 182. [w] Mem. de Com. tom. i. 381.

SECT. II. his power and addrefs in influencing the election of reprefentatives, by bribing or overawing the members, and by various changes which he artfully made in the form of their deliberations, Louis acquired fuch entire direction of thefe affemblies, that, from being the vigilant guardians of the privileges and property of the people, he rendered them tamely fubfervient, in promoting the moft odious meafures of his reign [x]. As no power remained to fet bounds to his exactions, he not only continued all the taxes impofed by his father, but made immenfe additions to them, which amounted to a fum that appeared aftonifhing to his contemporaries [y].*

He enlarges the bounds of the French monarchy.

NOR was it the power alone or wealth of the crown that Louis increafed; he extended its territories by acquifitions of various kinds. He got poffeffion of Roufillon by purchafe; Provence was conveyed to him by the will of Charles de Anjou; and upon the death of Charles the Bold, he feized with a ftrong hand Burgundy and Artois, which had belonged to that Prince. Thus, during the courfe of a fingle reign, France was formed into one compact kingdom, and the fteady unrelenting policy of Louis XI. not only fubdued

[x] Mem. de Comin. tom. i. 136. Chron. Scandal. ibid. tom. ii. p. 71. [y] Mem. de Com. tom. i. 334.

* Charles VII. levied taxes to the amount of 1,800,000 francs; Louis XI. raifed 4,700,000. The former had in pay 9000 cavalry and 16,000 infantry. The latter augmented the cavalry to 15,000, and the infantry to 25,000. Mem. de Comines, i. 384.

the

the haughty ſpirit of the feudal nobles, but eſtabliſhed a ſpecies of government, ſcarcely leſs abſolute, or leſs terrible, than eaſtern deſpotiſm. SECT. II.

BUT fatal as his adminiſtration was to the liberties of his ſubjects, the authority which he acquired, the reſources of which he became maſter, and his freedom from reſtraint both in concerting his plans and in executing them, rendered his reign active and enterprizing. Louis negociated in all the courts of Europe; he obſerved the motions of all his neighbours; he engaged, either as principal, or as an auxiliary, in every great tranſaction; his reſolutions were prompt; his operations vigorous; and upon every emergence he could call forth into action the whole force of his kingdom. From the æra of his reign, inſtead of the feeble efforts of monarchs fettered and circumſcribed by a jealous nobility, the Kings of France, more maſters at home, have exerted themſelves more abroad, have formed more extenſive ſchemes of foreign conqueſts, and have carried on war with a ſpirit and vigour long unknown in Europe.

By all theſe the French government rendered more active and enterprizing,

THE example which Louis ſet was too inviting not to be imitated by other Princes. Henry VII. as ſoon as he was ſeated on the throne of England, formed the plan of enlarging his own prerogative, by breaking the power of the nobility. The circumſtances under which he undertook to execute it, were leſs favourable than thoſe under which Charles VII. had made the ſame attempt; and the

Steps taken towards extending the power of the crown in England;

SECT. II. the spirit with which he conducted it, was very different from that of Louis XI. Charles, by the success of his arms against the English, by the merit of having expelled them out of so many provinces, had established himself so firmly in the confidence of his people, as encouraged him to make bold encroachments on the ancient constitution. The daring genius of Louis broke through every barrier, and endeavoured to overturn or to remove every obstacle that stood in his way. But Henry held the sceptre by a disputed title; a popular faction was ready every moment to take arms against him; and after long civil wars, during which the nobility had often displayed their power in creating and deposing Kings, he felt that the regal authority had been so much relaxed, and that he entered into possession of a prerogative so much abridged, as made it necessary to carry on his measures deliberately, and without any violent exertion. He endeavoured to undermine that formidable structure, which he durst not attack with open force. His schemes, though cautious and slow in their operation, were well concerted, and productive in the end of great effects. By his laws, permitting the barons to break the entails of their estates, and to expose them to sale; by his regulations to prevent the nobility from keeping in their service those numerous bands of retainers, which rendered them formidable, and turbulent; by encouraging population, agriculture and commerce; by securing to his subjects, during a long reign, the enjoyment of the blessings

which

which flow from the arts of peace; by accuſtoming them to an adminiſtration of government, under which the laws were executed with ſteadineſs and vigour; he made imperceptibly ſuch alterations in the Engliſh conſtitution, that he tranſmitted to his ſucceſſor authority ſo extenſive, as rendered him one of the moſt abſolute Monarchs in Europe, and capable of the greateſt and moſt vigorous efforts. SECT. II.

In Spain, the union of all its crowns by the marriage of Ferdinand and Iſabella; the glory that they acquired by the conqueſt of Granada, which brought the odious dominion of the Moors to a period; the command of the great armies which it had been neceſſary to keep long on foot, in order to accompliſh this; the wiſdom and ſteadineſs of their adminiſtration; and the addreſs with which they availed themſelves of every incident to humble the nobility, and to extend their own prerogative, conſpired in raiſing theſe monarchs to ſuch eminence and authority, as none of their predeceſſors had ever enjoyed. Though ſeveral cauſes, which ſhall be explained in another place, prevented their attaining the ſame extenſive powers with the Kings of France and England, and preſerved the feudal conſtitution in Spain longer entire, their great abilities ſupplied the defects of their prerogative, and improved with ſuch dexterity all the advantages which they poſſeſſed, that Ferdinand carried on his foreign operations, which And in Spain.

SECT. II. were very extensive, with extraordinary vigour and effect.

Events happened, which called the several monarchs to exert the new powers which they had acquired.

WHILE these Princes were thus enlarging the boundaries of prerogative, and taking such steps towards rendering their kingdoms capable of acting with union and with force, events occurred, which called them forth to exert the new powers which they had acquired. These engaged them in such a series of enterprizes and negociations, that the affairs of all the considerable nations in Europe came to be insensibly interwoven with each other; and a great political system was gradually formed, which grew to be an object of universal attention.

The first of these events was the marriage of the heiress of the house of Burgundy.

THE first event which merits notice, on account of its influence in producing this change in the state of Europe, was the marriage of the daughter of Charles the Bold, the sole heiress of the house of Burgundy. For some years before her father's death, she had been considered as the apparent successor to his territories, and Charles had made proposals of marrying her to several different Princes, with a view of alluring them, by that offer, to favour the schemes which his restless ambition was continually forming.

The importance of this to the state of Europe.

THIS rendered the alliance with her an object of general attention; and all the advantages of acquiring possession of her territories, the most opulent at that time and best cultivated of any on this

this ſide of the Alps, were perfectly underſtood. As ſoon, then, as the untimely death of Charles opened the ſucceſſion, the eyes of all the Princes in Europe were turned towards Mary, and they felt themſelves deeply intereſted in the choice which ſhe was about to make of the perſon, on whom ſhe would beſtow that rich inheritance.

SECT. II.

A. D. 1477. January 5.

Views of Louis XI. with reſpect to it.

Louis XI. from whoſe kingdom ſeveral of the provinces which ſhe poſſeſſed had been diſmembered, and whoſe dominions ſtretched along the frontier of her territories, had every inducement to court her alliance. He had, likewiſe, a good title to expect the favourable reception of any reaſonable propoſition he ſhould make, with reſpect to the diſpoſal of a Princeſs, who was the vaſſal of his crown, and deſcended from the royal blood of France. There were only two propoſitions, however, which he could make with propriety. The one was the marriage of the Dauphin, the other that of the Count of Angouleme, a Prince of the blood, with the heireſs of Burgundy. By the former, he would have annexed all her territories to his crown, and have rendered France at once the moſt reſpectable monarchy in Europe. But the great diſparity of age between the two parties, Mary being twenty, and the Dauphin only eight years old; the avowed reſolution of the Flemings, not to chuſe a maſter poſſeſſed of ſuch power as might enable him to form ſchemes dangerous to their liberties; together with their dread of falling under the odious and oppreſſive govern-

ment

SECT. II. ment of Louis, were obſtacles in the way of executing this plan, which it was vain to think of ſurmounting. By the latter, the accompliſhment of which might have been attained with eaſe, Mary having diſcovered ſome inclination to a match with the Count of Angouleme[z], Louis would have prevented the dominions of the houſe of Burgundy from being conveyed to a rival power, and in return for ſuch a ſplendid eſtabliſhment for the Count of Angouleme, he muſt have obtained, or would have extorted from him conceſſions highly beneficial to the crown of France. But Louis had been accuſtomed ſo long to the intricacies of a crooked and inſidious policy, that he could not be ſatisfied with what was obvious and ſimple; and was ſo fond of artifice and refinement, that he came to conſider theſe as his ultimate object, not as the means only of conducting affairs. From this principle, no leſs than from his unwillingneſs to aggrandize any of his own ſubjects, or from his deſire of oppreſſing the houſe of Burgundy, which he hated, he neglected the courſe which a Prince leſs able and artful would have taken, and followed one more ſuited to his own genius.

The ſingular courſe which he followed.

HE propoſed to render himſelf, by force of arms, maſter of thoſe provinces which Mary held of the crown of France, and even to puſh his conqueſts into her other territories, while he amuſed her with inſiſting continually on the impracticable match with the Dauphin. In proſecuting this

[z] Mem. de Comines, i. 358.

plan,

plan, he displayed wonderful talents and industry, and exhibited such scenes of treachery, falsehood and cruelty, as are amazing even in the history of Louis XI. Immediately upon the death of Charles, he put his troops in motion, and advanced towards the Netherlands. He corrupted the leading men in the provinces of Burgundy and Artois, and seduced them to desert their sovereign. He got admission into some of the frontier towns by bribing the governors; the gates of others were opened to him in consequence of his intrigues with the inhabitants. He negociated with Mary; and, in order to render her odious to her subjects, he betrayed to them her most important secrets. He carried on a private correspondence with the two ministers whom she chiefly trusted, and then communicated the letters which he had received from them to the States of Flanders, who, enraged at their perfidy, brought them immediately to trial, tortured them with extreme cruelty, and, unmoved by the tears and intreaties of their sovereign, who knew and approved of all that the ministers had done, they beheaded them in her presence[a].

SECT. II.

WHILE Louis, by this conduct, unworthy of a great monarch, was securing the possession of Burgundy, Artois, and the towns on the Somme, the States of Flanders carried on a negociation with the Emperor Frederick III. and concluded a treaty of marriage between their sovereign and his

The effect of this, the marriage of Maximilian with the heiress of Burgundy. A. D. 1477.

[a] Mem. de Comines, liv. v. ch. 15. p. 309, &c.

Sect. II. son Maximilian, Archduke of Auſtria. The illuſtrious birth of that Prince, as well as the high dignity of which he had the proſpect, rendered the alliance honourable for Mary, while, from the diſtance of his hereditary territories, and the ſcantineſs of his revenues, his power was ſo inconſiderable as did not excite the jealouſy or fear of the Flemings.

The influence of that on the ſtate of Europe.

Thus Louis, by the caprice of his temper, and the exceſs of his refinements, put the houſe of Auſtria in poſſeſſion of this noble inheritance. By this acquiſition, the foundation of the future grandeur of Charles V. was laid; and he became maſter of thoſe territories, which enabled him to carry on his moſt formidable and deciſive operations againſt France. Thus, too, the ſame monarch who firſt united the interior force of France, and eſtabliſhed it on ſuch a footing as to render it formidable to the reſt of Europe, contributed, far contrary to his intention, to raiſe up a rival power, which, during two centuries, has thwarted the meaſures, oppoſed the arms, and checked the progreſs of his ſucceſſors.

The next conſiderable event was the invaſion of Italy by Charles VIII. A.D. 1494

The next event of conſequence in the fifteenth century, was the expedition of Charles VIII. into Italy. This occaſioned revolutions no leſs memorable; produced alterations, which were more immediately perceived, both in the military and political ſyſtem; rouzed the ſtates of Europe to bolder efforts; and blended their affairs and

interefts more clofely together. The mild administration of Charles, a weak but generous Prince, feems to have revived the fpirit and genius of the French nation, which the rigid defpotifm of Louis XI. his father had depreffed, and almoft extinguifhed. The ardour for military fervice, natural to the French nobility, returned, and their young monarch was impatient to diftinguifh his reign by fome fplendid enterprize. While he was uncertain towards what quarter he fhould turn his arms, the folicitations and intrigues of an Italian politician, no lefs infamous on account of his crimes, than eminent for his abilities, determined his choice. Ludovico Sforza, having formed the defign of depofing his nephew the duke of Milan, and of placing himfelf on the ducal throne, was fo much afraid of a combination of the Italian powers to thwart this meafure, and to fupport the injured Prince, with whom moft of them were connected by blood or alliance, that he faw the neceffity of fecuring the aid of fome able protector. The King of France was the perfon to whom he applied; and without difclofing to him his own intentions, he laboured to prevail with him to march into Italy, at the head of a powerful army, in order to feize the crown of Naples, to which he had pretenfions as heir of the houfe of Anjou. The right to that kingdom, claimed by the Angevin family, had been conveyed to Louis XI. by Charles of Anjou, count of Maine and Provence. But that fagacious monarch, though he took immediate poffeffion of thofe territories of

SECT. II.

The motives of this.

Sect. II. which Charles was really master, totally disregarded his ideal title to a kingdom, over which another Prince reigned in tranquillity; and uniformly declined involving himself in the labyrinth of Italian politicks. His son, more adventurous, or more inconsiderate, embarked eagerly in this enterprize; and contemning all the remonstrances of his most experienced counsellors, prepared to carry it on with the utmost vigour.

His resources for this enterprize.

The power which Charles possessed was so great, that he reckoned himself equal to this arduous undertaking. His father had transmitted to him such an ample prerogative, as gave him the entire command of his kingdom. He himself had added considerably to the extent of his dominions, by his prudent marriage with the heiress of Bretagne, which rendered him master of that province, the last of the great fiefs that remained to be annexed to the crown. He soon assembled forces which he thought sufficient; and so impatient was he to enter on his career as a conqueror, that sacrificing what was real, for what was chimerical, he restored Rousillon to Ferdinand, and gave up part of his father's acquisitions in Artois to Maximilian, with a view of inducing these Princes not to molest France, while he was carrying on his operations in Italy.

His preparations for it.

But so different were the efforts of the States of Europe in the fifteenth century, from those which

which we ſhall behold in the courſe of this hiſtory, that the army, with which Charles undertook this great enterprize, did not exceed twenty thouſand men. The train of artillery, however, the ammunition, and warlike ſtores of every kind provided for its uſe, were ſo conſiderable as to bear ſome reſemblance to the immenſe apparatus of modern war [b]. SECT. II.

Its ſucceſs.

WHEN the French entered Italy, they met with nothing able to reſiſt them. The Italian powers having remained, during a long period, undiſturbed by the invaſion of any foreign enemy, had formed a ſyſtem with reſpect to their affairs, both in peace and war, peculiar to themſelves. In order to adjuſt the intereſts, and balance the power of the different ſtates into which Italy was divided, they were engaged in perpetual and endleſs negociations with each other, which they conducted with all the ſubtlety of a refining and deceitful policy. Their conteſts in the field, when they had recourſe to arms, were decided in mock battles, by innocent and bloodleſs victories. Upon the firſt appearance of the danger which now impended, they had recourſe to the arts which they had ſtudied, and employed their utmoſt ſkill in intrigue in order to avert it. But this proving ineffectual, their effeminate mercenaries, the only military force that remained in the country, being fit only for the parade of ſervice, were terrified

[b] Mezeray Hiſt. tom. ii. 777.

SECT. II. at the aſpect of real war, and ſhrunk at its approach. The impetuoſity of the French valour appeared to them irreſiſtible. Florence, Piſa, and Rome opened their gates as the French army advanced. The proſpect of this dreadful invaſion ſtruck one King of Naples with ſuch panic terror, that he died (if we may believe hiſtorians) of the fright. Another abdicated his throne from the ſame puſilanimous ſpirit. A third fled out of his dominions, as ſoon as the enemy appeared on the Neapolitan frontiers. Charles, after marching thither from the bottom of the Alps, with as much rapidity, and almoſt as little oppoſition, as if he had been on a progreſs through his own dominions, took quiet poſſeſſion of the throne of Naples, and intimidated or gave law to every power in Italy.

Its effects, particularly in giving riſe to the ſyſtem concerning a balance of power.

SUCH was the concluſion of this expedition, which muſt be conſidered as the firſt great exertion of thoſe new powers which the Princes of Europe had acquired, and now began to exerciſe. Its effects were no leſs conſiderable than its ſucceſs had been aſtoniſhing. The Italians, unable to reſiſt the impreſſion of the enemy which broke in upon them, permitted him to hold on his courſe undiſturbed. They quickly perceived that no ſingle power, which they could rouſe to action, was an equal match for a monarch, who ruled over ſuch extenſive territories, and was at the head of ſuch a martial people; but that a confe-

deracy might accomplish what the separate members of it durst not attempt. To this expedient, the only one that remained to deliver or to preserve them from the yoke, they had recourse. While Charles inconsiderately wasted his time at Naples in festivals and triumphs on account of his past successes, or was fondly dreaming of future conquests in the East, to the empire of which he now aspired, they formed against him a powerful combination of almost all the Italian states, supported by the Emperor Maximilian, and Ferdinand King of Aragon. The union of so many powers, who suspended or forgot all their particular animosities, that they might act with concert against an enemy who had become formidable to them all, awakened Charles from his thoughtless security. He saw now no prospect of safety but in returning to France. An army of thirty thousand men, assembled by the allies, was ready to obstruct his march; and though the French, with a daring courage, which more than counterbalanced their inferiority in number, broke through that great body, and gained a victory, which opened to their monarch a safe passage into his own territories, he was stripped of all his conquests in Italy in as short a time as it had taken to acquire them; and the political system in that country resumed the same appearance as before his invasion.

The sudden and decisive effect of this confederacy, seems to have instructed the Princes and

SECT. II.

This becomes the great object of policy, first in Italy, and then in Europe.

ſtateſmen of Italy as much as the irruption of the French had diſconcerted and alarmed them. They had extended, on this occaſion, to the affairs of Europe, the maxims of that political ſcience which had hitherto been applied only to regulate the operations of the petty ſtates in their own country. They had diſcovered the method of preventing any monarch from riſing to ſuch a degree of power, as was inconſiſtent with the general liberty; and had manifeſted the importance of attending to that great ſecret in modern policy, the preſervation of a proper diſtribution of power among all the members of the ſyſtem into which the ſtates of Europe are formed. During all the wars of which Italy thenceforth became the theatre, and amidſt the hoſtile operations which the imprudence of Louis XII. and the ambition of Ferdinand of Aragon, carried on in that country, with little interruption, from the cloſe of the fifteenth century to that period at which the ſubſequent hiſtory commences, the maintaining a proper balance of power between the contending parties, became the great object of attention to the ſtateſmen of Italy. Nor was the idea confined to them. Self-preſervation taught other powers to adopt it. It grew to be faſhionable and univerſal. From this æra we can trace the progreſs of that intercourſe between nations, which has linked the powers of Europe ſo cloſely together; and can diſcern the operations of that provident policy, which, during peace, guards againſt remote and contingent dangers; which,

in war, hath prevented rapid and deftructive conquefts. SECT. II.

The wars in Italy render ftanding armies general.

THIS was not the only effect of the operations which the great powers of Europe carried on in Italy. They contributed to render fuch a change, as the French had begun to make in the ftate of their troops, general; and obliged all the Princes, who appeared on this new theatre of action, to eftablifh the military force of their kingdoms on the fame footing with that of France. When the feat of war came to be remote from the countries which maintained the conteft, the fervice of the feudal vaffals ceafed to be of any ufe; and the neceffity of employing troops regularly trained to arms, and kept in conftant pay, came at once to be evident. When Charles marched into Italy, his cavalry was entirely compofed of thofe companies of Gendarmes, embodied by Charles VII. and continued by Louis XI. his infantry confifted partly of Swifs, hired of the Cantons, and partly of Gafcons, armed and difciplined after the Swifs model. To thefe Louis XII. added a body of Germans, well known in the wars of Italy by the name of the Black Bands. But neither of thefe monarchs made any account of the feudal militia, or ever had recourfe to that military force which they might have commanded, in virtue of the ancient inftitutions in their kingdom. Maximilian and Ferdinand, as foon as they began to act in Italy, employed the fame inftruments, and trufted the

SECT. II. execution of their plans entirely to mercenary troops.

Teach the Europeans the superior importance of infantry in war.

THIS innovation in the military ſyſtem was quickly followed by another, which the cuſtom of employing Swiſs in the Italian wars, was the occaſion of introducing. The arms and diſcipline of the Swiſs, were different from thoſe of other European nations. During their long and violent ſtruggles in defence of their liberties againſt the houſe of Auſtria, whoſe armies, like thoſe of other conſiderable Princes, conſiſted chiefly of heavy armed cavalry, the Swiſs found that their poverty, and the ſmall number of gentlemen reſiding in their country, at that time barren and uncultivated, put it out of their power to bring into the field any body of horſe capable of facing the enemy. Neceſſity compelled them to place all their confidence in infantry; and in order to render it capable of withſtanding the ſhock of cavalry, they gave the ſoldiers breaſt-plates and helmets as defenſive armour; together with long ſpears, halberts, and heavy ſwords, as weapons of offence. They formed them into large battalions, ranged in deep and cloſe array, ſo that they could preſent on every ſide a formidable front to the enemy [c]. The men at arms could make no impreſſion on the ſolid ſtrength of ſuch a body. It repulſed the Auſtrians in all their attempts to conquer Swiſſerland. It broke the Burgundian Gendarmerie, which was ſcarcely inferior to that of France, either in number or re-

[c] Machiavel Art of War, b. ii. chap. ii. p. 451.

putation:

putation: And when firſt called to act in Italy, it bore down by its irreſiſtible force every enemy that attempted to oppoſe it. Theſe repeated proofs of the deciſive effect of infantry, exhibited on ſuch conſpicuous occaſions, reſtored that ſervice to reputation, and gradually re-eſtabliſhed the opinion, which had been long exploded, of its ſuperior importance in the operations of war. But the glory which the Swiſs had acquired, having inſpired them with ſuch high ideas of their own proweſs and conſequence as rendered them mutinous and inſolent, the Princes who employed them became weary of depending on the caprice of foreign mercenaries, and began to turn their attention towards the improvement of their national infantry.

National infantry eſtabliſhed in Germany.

The German powers having the command of men, whom nature has endowed with that ſteady courage and perſevering ſtrength which forms them to be ſoldiers, ſoon modelled their troops in ſuch a manner, that they vied with the Swiſs both in diſcipline and valour.

In France.

The French monarchs, though more ſlowly, and with greater difficulty, accuſtomed the impetuous ſpirit of their people to ſubordination and diſcipline; and were at ſuch pains to render their national infantry reſpectable, that as early as the reign of Louis XII. ſeveral gentlemen of high rank had ſo far abandoned their ancient ideas, as to condeſcend to enter into that ſervice[d].

[d] Brantome, tom. x. p. 18. Mem. de Fleuranges, 143.

The

Sect. II.

In Spain.

The Spaniards, whose situation made it difficult to employ any other than their national troops in the southern parts of Italy, which was the chief scene of their operations in that country, not only adopted the Swiss discipline, but improved upon it, by mingling a proper number of soldiers, armed with heavy muskets, in their battalions; and thus formed that famous body of infantry, which, during a century and a half, was the admiration and terror of all Europe. The Italian states gradually diminished the number of their cavalry, and, in imitation of their more powerful neighbours, brought the strength of their armies to consist in foot soldiers. From this period, the nations of Europe have carried on war with forces more adapted to every species of service, more capable of acting in every country, and better fitted both for making conquests, and for preserving them.

The Italian wars occasion an increase of the publick revenues in Europe.

As their efforts in Italy led the people of Europe to these improvements in the art of war, they gave them likewise the first idea of the expence which accompanies great and continued operations, and accustomed them to the burden of those impositions, which are necessary for supporting them. While the feudal policy subsisted in full vigour, while armies were composed of military vassals called forth to attack some neighbouring power, and to perform, in a short campaign, the services which they owed to their sovereign, the expence of war was extremely moderate. A small subsidy enabled a Prince to begin and to finish his greatest

operations. But when Italy became the theatre on which the powers of Europe contended for superiority, the preparations requisite for such a distant expedition, the pay of armies kept constantly on foot, their subsistance in a foreign country, the sieges to be undertaken, and the towns to be defended, swelled the charges of war immensely, and by creating demands unknown in less active times, multiplied taxes in every kingdom. The progress of ambition, however, was so rapid, and Princes extended their operations so fast, that it was impossible at first to establish funds proportional to the increase of expence which these occasioned. When Charles VIII. invaded Naples, the sums requisite for carrying on that enterprize so far exceeded those which France had been accustomed to contribute, that before he reached the frontiers of Italy, his treasury was exhausted, and the domestic resources, of which his extensive prerogative gave him the command, were at an end. As he durst not venture to lay any new imposition on his people, oppressed already with the weight of unusual burdens; the only expedient that remained was, to borrow of the Genoese as much money as might enable him to continue his march. But he could not obtain the sum that was requisite, without consenting to pay annually the exorbitant interest of forty-two livres for every hundred that he received [e]. We may observe the same disproportion between the efforts and revenues of other

SECT. II.

[e] Mem. de Comines, lib. vii. c. 5. p. 440.

Princes,

Sect. II. Princes, his contemporaries. From this period, taxes went on increaſing; and during the reign of Charles V. ſuch ſums were levied in every ſtate, as would have appeared prodigious at the cloſe of the fifteenth century, and gradually prepared the way for the more exorbitant exactions of modern times.

The league of Cambray another important occurrence.

The laſt tranſaction, previous to the reign of Charles V. that merits attention on account of its influence upon the ſtate of Europe, is the league of Cambray. To humble the republick of Venice, and to divide its territories, was the object of all the powers who united in this confederacy. The civil conſtitution of Venice, eſtabliſhed on a firm baſis, had ſuffered no conſiderable alteration for ſeveral centuries; during which, the ſenate conducted its affairs by maxims of policy no leſs prudent than vigorous, and adhered to theſe with an uniform conſiſtent ſpirit, which gave that commonwealth great advantage over other ſtates, whoſe views and meaſures changed as often as the form of their government, or the perſons who adminiſtered it. By theſe unintermitted exertions of wiſdom and valour, the Venetians enlarged the dominions of their commonwealth, until it became the moſt conſiderable power in Italy. While their extenſive commerce, the uſeful and curious manufactures which they carried on, together with their monopoly of the precious commodities of the Eaſt, rendered Venice the moſt opulent ſtate in Europe.

Their

Sect. II.

Their power was the object of terror to their Italian neighbours. Their wealth was viewed with envy by the greatest monarchs, who could not vie with their private citizens in the magnificence of their buildings, in the richness of their dress and furniture, or in splendor and elegance of living[f]. Julius II. whose ambition was superior, and his abilities equal, to those of any Pontiff who ever sat on the Papal throne, formed the idea of this league against the Venetians, and endeavoured, by applying to these passions which I have mentioned, to persuade other Princes to join in it. By working upon the fears of the Italian powers, and upon the avarice of the monarchs beyond the Alps, he induced them, in concurrence with other causes, which it is not my province to explain, to form against these haughty republicans one of the most extensive confederacies Europe had ever beheld.

The motives of it.

The Emperor, the King of France, the King of Aragon, the Pope, were principals in the league of Cambray, to which almost all the Princes of Italy acceded, the least considerable of them hoping for some share in the spoils of a state, which they already deemed to be devoted to destruction. The Venetians might have diverted this storm, or have broken its force; but with a presumptuous rashness, to which there is nothing similar in the course of their history, they waited its approach. The impetuous valour of the French, rendered

The rapid progress of the confederates.

[f] Heliani oratio apud Goldastum in polit. Imperial. p. 980.

ineffectual

SECT. II. ineffectual all their precautions for the ſafety of the republick; and the fatal battle of Ghiarradadda entirely ruined the army, on which they relied for defence. Julius ſeized all the towns which they held in the eccleſiaſtical territories. Ferdinand re-annexed the towns of which they had got poſſeſſion on the coaſt of Calabria, to his Neapolitan dominions. Maximilian, at the head of a powerful army, advanced towards Venice on the one ſide. The French puſhed their conqueſts on the other. The Venetians, ſurrounded by ſo many enemies, and left without one ally, ſunk from the height of preſumption to the depths of deſpair; abandoned all their territories on the continent; and ſhut themſelves up in their capital, as their laſt refuge, and the only place which they hoped to preſerve.

Diviſion ariſes among them.

THIS rapid ſucceſs, however, proved fatal to the confederacy. The members of it, united while they were engaged in ſeizing their prey, began to feel their ancient jealouſy and animoſities revive, as ſoon as they had a proſpect of dividing it. When the Venetians obſerved theſe ſymptoms of alienation and diſtruſt, a ray of hope broke in upon them; the ſpirit natural to their councils returned; they reſumed ſuch wiſdom and firmneſs, as made ſome atonement for their former imprudence and dejection; they recovered part of the territory which they had loſt; they appeaſed the Pope and Ferdinand by well-timed conceſſions in their favour; and at length diſſolved the confederacy, which

which had brought their commonwealth to the brink of ruin. Sect. II.

Julius, elated with beholding the effects of a league which he himself had planned, and imagining that nothing was too ardous for him to undertake, conceived the idea of expelling every foreign power out of Italy, and bent all the force of his mind towards executing a scheme so well suited to his vast and enterprizing genius. He directed his first attack against the French, who, on many accounts, were more odious to the Italians, than any of the foreigners who had acquired dominion in their country. By his activity and address, he prevailed on most of the powers, who had joined in the league of Cambray, to turn their arms against the King of France, their former ally; and engaged Henry VIII. who had lately ascended the throne of England, to favour their operations by invading France. Louis XII. resisted all the efforts of this formidable and unexpected confederacy, with undaunted fortitude. Hostilities were carried on, during several campaigns, in Italy, on the frontiers of Spain, and in Picardy, with alternate success. Exhausted, at length, by the variety as well as extent of his operations; unable to withstand a confederacy which brought against him superior force, conducted with wisdom, and acting with perseverance; Louis found it necessary to conclude separate treaties of peace with his

New objects of their policy and ambition.

SECT. II. his enemies; and the war terminated with the loſs of every thing which the French had acquired in Italy, except the caſtle of Milan, and a few inconſiderable towns in that dutchy.

By this the intercourſe among the European nations increaſes.

THE various negociations carried on during this buſy period, and the different combinations formed among powers hitherto little connected with each other, greatly increaſed that intercourſe between the nations of Europe, which I have mentioned as one effect of the events in the fifteenth century. While the greatneſs of the objects at which they aimed, the diſtant expeditions which they undertook, as well as the length and obſtinacy of the conteſts in which they engaged, obliged them to exert themſelves with a vigour and perſeverance unknown in the preceding ages.

They are prepared for the tranſactions of the ſixteenth century.

THOSE active ſcenes which the following Hiſtory will exhibit, and the variety and importance of thoſe tranſactions which diſtinguiſh the period to which it extends, are not to be aſcribed ſolely to the ambition, to the abilities, or to the rivalſhip of Charles V. and of Francis I. The kingdoms of Europe had arrived at ſuch a degree of improvement in the internal adminiſtration of government, and Princes had acquired ſuch command of the national force which was to be exerted in foreign wars, that they were in a condition to enlarge the ſphere of their operations, and to increaſe

increaſe the vigour of their efforts. Their conteſts in Italy, which led them firſt to try the extent of the power that they had acquired, gave riſe to ſo many oppoſite claims and pretenſions, excited ſuch a ſpirit of diſcord and rivalſhip between nations, and laid the foundation of ſo many quarrels, as could not fail of producing extraordinary convulſions in Europe; and the ſixteenth century opened with the certain proſpect of its abounding in great and intereſting events. SECT. II.

A

V I E W

OF THE

PROGRESS OF SOCIETY

IN

E U R O P E,

FROM THE

SUBVERSION OF THE ROMAN EMPIRE,

TO THE

BEGINNING OF THE SIXTEENTH CENTURY.

S E C T I O N III.

View of the political Conſtitution of the principal States in Europe, at the Commencement of the ſixteenth Century.

A conſiderable variety in the conſtitution of the different nations of Europe.

HAVING thus enumerated the principal cauſes and events, the influence of which extended to all the ſtates in Europe, and contributed either to improve their internal government and police, or to enlarge the ſphere of their activity, and to augment their national force; nothing remains, in order to prepare my readers for enter-

ing with full information upon perusing the History of the Reign of Charles V. but to give some view of the particular constitution and form of civil government, in each of the nations which acted any considerable part during that period. While these institutions and occurrences, which I have mentioned, formed the people of Europe to resemble each other, and conducted them from barbarism to refinement, in the same path, and with almost equal steps, there were other circumstances which occasioned a difference in their political establishments, and gave rise to those peculiar modes of government, which have produced such variety in the character and genius of nations. Sect. III.

It is no less necessary to become acquainted with the latter, than to have contemplated the former. The view which I have exhibited of the causes and events, whose influence was universal, will enable my readers to account for the surprising resemblance among the nations of Europe in their interior police, and foreign operations. But, without a distinct knowledge of the peculiar form and genius of their civil government, a great part of their transactions must appear altogether mysterious and inexplicable. The historians of particular States, as they seldom extended their views farther than to the amusement or instruction of their fellow-citizens, by whom they might presume that all domestick customs and institutions were perfectly understood, have often neglected to

Necessary to explain the state of each, when Charles V. began his reign.

SECT. III. descend into such details with respect to these, as are sufficient to convey to foreigners full light and information concerning the occurrences which they relate. But a history, which comprehends the transactions of so many different countries, would be extremely imperfect, without a previous survey of their respective constitutions and political state. It is from his knowledge of these, that the reader must draw those principles, which will enable him to judge with discernment, and to decide with certainty concerning the conduct of nations.

A MINUTE detail, however, of the peculiar forms and regulations in every country, would lead to deductions of immeasurable length. To sketch out the great lines which distinguish and characterize each government, is all that the nature of my present work will admit of, and all that is necessary to illustrate the events which it records.

The State of Italy.

AT the opening of the sixteenth century, the political face of Italy was extremely different from that of any other part of Europe. Instead of those extensive monarchies, which occupied the rest of the continent, that delightful country was parcelled out among many small states, each of which possessed sovereign and independent jurisdiction. The only monarchy in Italy was that of Naples. The dominion of the Popes was of a peculiar species, to which there is nothing similar either in ancient or modern times. In Venice and

Florence, a republican form of government was established. Milan was subject to sovereigns, who had assumed no higher title than that of Dukes.

The Papal dignity the highest in Europe.

THE Pope was the first of these powers in dignity, and not the least considerable by the extent of his territories. In the primitive church, the jurisdiction of bishops was equal and co-ordinate. They derived, perhaps, some degree of consideration from the dignity of the See in which they presided. They possessed, however, no real authority or pre-eminence, but what they acquired by superior abilities, or superior sanctity. As Rome had so long been the seat of Empire, and capital of the world, its bishops were on that account entitled to respect; they received it; but during several ages they claimed and received nothing more. From these humble beginnings, they advanced with such an adventurous and well-directed ambition, that they established a spiritual dominion over the minds and sentiments of men, to which all Europe submitted with implicit obedience. Their claim of universal jurisdiction, as heads of the church, and their pretensions to infallibility in their decisions, as successors of St. Peter, are as chimerical, as they are repugnant to the genius of the Christian religion. But on these foundations, the superstition and credulity of mankind enabled them to erect an amazing superstructure. In all ecclesiastical controversies, their decisions were received as the infallible oracles of truth. Nor was the plenitude of their power con-

Origin and progress of the Papal power.

SECT. III. fined to theſe alone; they dethroned monarchs; diſpoſed of crowns; abſolved ſubjects from the obedience due to their ſovereigns; and laid kingdoms under interdicts. There was not a ſtate in Europe which had not been diſquieted by their ambition. There was not a throne which they had not ſhaken; nor a Prince, who did not tremble at their power.

The territories of the Popes inadequate to ſupport their ſpiritual juriſdiction.

NOTHING was wanting to render this Empire abſolute, and to eſtabliſh it on the ruins of all civil authority, but that the Popes ſhould have poſſeſſed ſuch a degree of temporal power, as was ſufficient to ſecond and enforce their ſpiritual decrees. Happily for mankind, while their ſpiritual juriſdiction was moſt extenſive, and at its greateſt height, their temporal property was extremely limited. They were powerful Pontiffs, formidable at a diſtance; but they were petty Princes, without any conſiderable domeſtick force. They had early endeavoured, indeed, to acquire territory by arts, ſimilar to thoſe which they had employed in extending their juriſdiction. Under pretence of a donation from Conſtantine, and of another from Charlemagne or his father Pepin, they attempted to take poſſeſſion of ſome towns adjacent to Rome. But theſe donations were fictitious, and availed them little. The benefactions, for which they were indebted to the credulity of the Norman adventurers, who conquered Naples, and to the ſuperſtition of the counteſs Matilda, were

were real, and added ample domains to the Holy See. SECT. III.

But the power of the Popes did not increaſe in proportion to the extent of territory which they had acquired. In the dominions annexed to the Holy See, as well as in thoſe ſubject to other Princes in Italy, the ſovereign of a ſtate was far from having the command of the force which it contained. During the turbulence and confuſion of the middle ages, the powerful nobility or leaders of popular factions in Italy, had ſeized the government of different towns; and after ſtrengthening their fortifications, and taking a body of mercenaries into pay, they aſpired at independence. The territory which the church had gained, was filled with petty tyrants of this kind, who left the Pope hardly the ſhadow of dominion. Their authority in their own territories extremely limited.

As theſe uſurpations almoſt annihilated the Papal power in the greater part of the towns ſubject to the church, the Roman barons frequently diſputed the authority of the Popes, even in Rome itſelf. In the twelfth century, an opinion began to be propagated, "That as the function of eccleſiaſtics was purely ſpiritual, they ought to poſſeſs no property, and to claim no temporal juriſdiction; but, according to the laudable example of their predeceſſors in the primitive church, ſhould ſubſiſt wholly upon their tithes, or upon the voluntary oblations of the people[a]." This doctrine being It was circumſcribed by the ambition of the Roman barons;

[a] Otto Friſingenſis de Geſtis Frider. Imp. lib. ii. cap. 20.

SECT. III. addressed to men, who had beheld the scandalous manner in which the avarice and ambition of the clergy had prompted them to contend for wealth, and to exercise power, they listened to it with fond attention. The Roman barons, who had felt most sensibly the rigour of ecclesiastical oppression, adopted these sentiments with such ardour, that they set themselves instantly to shake off the yoke.

A. D. 1143. They endeavoured to restore some image of their ancient liberty, by reviving the institution of the Roman senate, in which they vested supreme authority; committing the executive power sometimes to one chief senator, sometimes to two, and sometimes to a magistrate dignified with the name of *The Patrician*. The Popes exerted themselves with vigour, in order to check this fatal encroachment on their jurisdiction. One of them, finding all his endeavours ineffectual, was so much mortified, that extreme grief cut short his days. Another, having ventured to attack the senators at the head of some armed men, was mortally wounded in the fray [b]. During a considerable period, the power of the Popes, before which the greatest monarchs in Europe trembled, was circumscribed within such narrow limits in their own capital, that they durst hardly exert any act of authority without the permission and concurrence of the senate.

[b] Otto Frising. Chron. lib. vii. cap. 27, 31. Id. de Gest. Frid. lib. i. c. 27. Muratori Annali d' Italia, vol. ix. 398, 404.

ENCROACHMENTS were made upon the Papal authority, not only by the uſurpations of the Roman nobility, but by the mutinous ſpirit of the people. During ſeventy years of the fourteenth century, the Popes fixed their reſidence in Avignon. The inhabitants of Rome, accuſtomed to conſider themſelves as the deſcendants of the people who had conquered the world, and had given laws to it, were too high-ſpirited to ſubmit with patience to the delegated authority of thoſe perſons, to whom the Popes committed the government of the city. On many occaſions, they oppoſed the execution of the Papal mandates, and on the ſlighteſt appearance of innovation or oppreſſion, they were ready to take arms in defence of their own immunities. Towards the middle of the fourteenth century, being inſtigated by Nicolas Rienzo, a man of low birth and a ſeditious ſpirit, but of popular eloquence and an enterprizing ambition, they drove all the nobility out of the city, eſtabliſhed a democratical form of government, elected Rienzo Tribune of the people, and inveſted him with extenſive authority. But though the frantick proceedings of the Tribune ſoon overturned this new ſyſtem; though the government of Rome was reinſtated in its ancient form; yet every freſh attack contributed to weaken the papal juriſdiction; and the turbulence of the people concurred with the ſpirit of independence among the nobility, to circumſcribe it within very

SECT. III.

and by the turbulence of the Roman people, from A. D. 1308, to A. D. 1377.

narrow

Sect. III. narrow bounds [c]. Gregory VII. and other domineering Pontiffs, accomplished those great things which rendered them so formidable to the Emperors with whom they contended, not by the force of their arms, or by the extent of their power, but by the dread of their spiritual censures, and by the effect of their intrigues, which excited rivals, and called forth enemies against every Prince, whom they wished to depress or to destroy.

Alexander VI. and Julius II. render the Popes considerable Princes.

Many attempts were made by the Popes, not only to humble these usurpers, who lorded it over the cities in the ecclesiastical state, but to break the turbulent spirit of the Roman people. These were long unsuccessful. At last Alexander VI. with a policy no less artful than flagitious, subdued and extirpated most of the great Roman barons, and rendered the Popes masters of their own dominions. The enterprising ambition of Julius II. added conquests of no inconsiderable value to the patrimony of St. Peter. Thus the Popes, by degrees, became powerful temporal Princes. Their territories, in the age of Charles V. were of greater extent than at present; their country seems to have been better cultivated, and more populous; and as they drew large contributions from every part of Europe, their revenues

[c] Historie Fiorentine de Giov Villani, lib. xii. c. 89. 104. ap. Murat. Script. Rerum. Ital. vol. xiii. Vita de Cola di Rienzo, ap. Murat. Antiq. Ital. vol. iii. p. 399, &c. Hist. de Nic. Rienzy, par M. de Boispreaux, p. 91, &c.

far

far exceeded thoſe of the neighbouring powers, and rendered them capable of more ſudden and vigorous efforts.

SECT. III.

Defects in the nature of eccleſiaſtical dominion.

THE genius of the papal government, however, was better adapted to the exerciſe of ſpiritual dominion, than of temporal power. With reſpect to the former, all its maxims were ſteady and invariable. Every new Pontiff adopted the plan of his predeceſſor. By education and habit, Eccleſiaſtics were ſo formed, that the character of the individual was ſunk in that of the profeſſion; and the paſſions of the man were ſacrificed to the intereſt and honour of the order. The hands which held the reins of adminiſtration might change; but the ſpirit which conducted them was always the ſame. While the meaſures of other governments fluctuated, and the objects at which they aimed varied, the church kept one end in view; and to this unrelaxing conſtancy of purſuit, it was indebted for its ſucceſs in the boldeſt attempts ever made by human ambition.

BUT in their civil adminiſtration, the Popes followed no ſuch uniform or conſiſtent plan. There, as in other governments, the character, the paſſions, and the intereſts of the perſon who had the ſupreme direction of affairs, occaſioned a variation both in objects and meaſures. As few Prelates reached the ſummit of eccleſiaſtical dignity, until they were far advanced in life, a change of maſters

was

SECT. III. was more frequent in the Papal dominions than in other ſtates, and the political ſyſtem was, of courſe, leſs ſtable and permanent. Every Pope was eager to make the moſt of the ſhort period, during which he had the proſpect of enjoying power, in order to aggrandize his own family, and to attain his private ends; and it was often the firſt buſineſs of his ſucceſſor to undo all that he had done, and to overturn what he had eſtabliſhed.

As Eccleſiaſticks were trained to pacifick arts, and early initiated in the myſteries of that policy, by which the court of Rome extended or ſupported its ſpiritual dominion, the Popes were apt to conduct their temporal affairs with the ſame ſpirit; and in all their meaſures were more ready to employ the refinements of intrigue, than the force of arms. It was in the Papal court that addreſs and ſubtlety in negociation firſt became a ſcience; and during the ſixteenth century, Rome was conſidered as the ſchool in which it might be beſt acquired.

As the decorum of their eccleſiaſtical character prevented the Popes from placing themſelves at the head of their armies, or taking the command, in perſon, of the military force in their dominions, they were afraid to arm their ſubjects; and in all their operations, whether offenſive or defenſive, they truſted entirely to mercenary troops.

As

As their power and dominions could not deſcend to their poſterity, the Popes were leſs ſolicitous than other Princes to form or to encourage ſchemes of publick utility and improvement. Their tenure was only for a ſhort life; preſent advantage was all that they attended to; to ſqueeze and to amaſs, not to meliorate, was their object. They erected, perhaps, ſome work of oſtentation, to remain as a monument of their Pontificate; they found it neceſſary, at ſome times, to eſtabliſh uſeful inſtitutions, in order to ſooth and ſilence the turbulent populace of Rome; but plans of general benefit to their ſubjects, and framed with a view to futurity, were rarely objects of attention in the Papal policy. The patrimony of St. Peter was worſe governed than any part of Europe; and though a generous Pontiff might ſuſpend for a little, or counter-act the effects of thoſe vices which are peculiar to the adminiſtration of eccleſiaſticks; the diſeaſe not only remained incurable, but has gone on increaſing from age to age; and the decline of the ſtate has kept pace with its progreſs.

The Popes derive ſome advantages from the union of their ſpiritual and temporal authority.

ONE circumſtance, farther, concerning the Papal government, is ſo ſingular, as to merit attention. As the ſpiritual ſupremacy and temporal power was united in one perſon, and uniformly aided each other in their operations, they became ſo blended together, that it was difficult to ſeparate them, even in imagination. The potentates, who found it neceſſary to oppoſe the meaſures which the Popes

Sect. III. Popes pursued as temporal Princes, could not divest themselves of the reverence which they imagined to be due to them as heads of the church, and vicars of Jesus Christ. It was with reluctance that they could be brought to a rupture with them; they were averse to push their operations against them to extremity; they listened eagerly to the first overtures of accommodation, and were willing to procure it almost upon any terms. Their consciousness of this, encouraged the enterprizing Pontiffs, who filled the Papal throne about the beginning of the sixteenth century, to engage in schemes seemingly the most extravagant. They trusted, that if their temporal power was not sufficient to carry them through with success, the respect paid to their spiritual dignity would enable them to extricate themselves with facility and with honour [d].

But

[d] The manner in which Louis XII. of France undertook and carried on war against Julius II. remarkably illustrates this observation. Louis solemnly consulted the clergy of France, whether it was lawful to take arms against a Pope, who had wantonly kindled war in Europe, and whom neither the faith of treaties, nor gratitude for favours received, nor the decorum of his character, could restrain from the most violent actions, to which the lust of power prompts ambitious Princes. Though his clergy authorised the war, yet Anne of Bretagne, his Queen, entertained scruples with regard to the lawfulness of it. The King himself, from some superstition of the same kind, carried it on faintly; and, upon every fresh advantage, renewed his propositions of peace. Mezeray, Hist. de France, fol. edit. 1685. tom. i. 852. I shall produce another proof of this reverence for the Papal character still more striking. Guicciardini, the most sagacious, perhaps, of all modern historians, and the

But when Popes came to take part more frequently in the contests among Princes, and to engage as principals or auxiliaries in every war kindled in Europe, this veneration for their sacred character began to abate; and striking instances will occur in the following history of its being almost totally extinct. SECT. III.

Constitution of the republick of Venice, with its rise and progress.

OF all the Italian powers, the republick of Venice, next to the Pope, was most connected with the rest of Europe. The rise of that commonwealth, during the inroads of the Huns in the fifth century; the singular situation of its capital in the small isles of the Adriatick gulf; and the more singular form of its civil constitution, are generally known. If we view the Venetian government as calculated for the order of nobles alone, its institutions are so excellent; the deliberative, legislative and executive powers are so admirably distributed and adjusted, that it must be regarded as a perfect model of political wisdom. But if we consider it as formed for a numerous body of people subject to its jurisdiction, it will appear a rigid and partial aristocracy, which lodges all power in the hands of a few members of the community, while it degrades and oppresses the rest.

the boldest in painting the vices and ambition of the Popes, represents the death of Migliau, a Spanish officer, who was killed during the siege of Naples, as a punishment inflicted on him by heaven, on account of his having opposed the setting of Clement VII. at liberty. Guic. Historia d'Italia, Genev. 1645. vol. ii. lib. 18. p. 467.

THE

SECT. III.

Defects in its government, particularly with respect to its military operation.

THE spirit of government, in a commonwealth of this species, was, of course, timid and jealous. The Venetian nobles distrusted their own subjects, and were afraid of allowing them the use of arms. They encouraged among them the arts of industry and commerce; they employed them in manufactures and in navigation; but never admitted them into the troops which the state kept in its pay. The military force of the republick consisted entirely of foreign mercenaries. The command of these was never trusted to noble Venetians, lest they should acquire such influence over the army, as might endanger the publick liberty; or become accustomed to the exercise of such power, as would make them unwilling to return to the condition of private citizens. A soldier of fortune was placed at the head of the armies of the commonwealth; and to obtain that honour, was the great object of the Italian *Condottieri*, or leaders of bands, who, in the fifteenth and sixteenth centuries, made a trade of war, and raised and hired out soldiers to different states. But the same suspicious policy, which induced them to employ these adventurers, prevented their placing entire confidence in them. Two noblemen, appointed by the senate, accompanied their army when it took the field, with the appellation of *Proveditori*, and like the field-deputies of the Dutch republick in latter times, observed all the motions of the general, and checked and controuled him in all his operations.

A COMMON-

Sect. III.

A commonwealth, with ſuch civil and military inſtitutions, was not formed to make conqueſts. While its ſubjects were diſarmed, and its nobles excluded from military command, it carried on its warlike enterprizes with great diſadvantage. This ought to have taught the Venetians to make ſelf-preſervation, and the enjoyment of domeſtick ſecurity, the objects of their policy. But republicks are apt to be ſeduced by the ſpirit of ambition, as well as Princes. When the Venetians ſo far forgot the interior defects in their government, as to aim at extenſive conqueſts, the fatal blow, which they received in the war excited by the league of Cambray, convinced them of the imprudence and danger of making violent efforts, in oppoſition to the genius and tendency of their conſtitution.

Excellence of its naval inſtitutions.

It is not, however, by its military, but by its naval and commercial power, that the importance of the Venetian commonwealth muſt be eſtimated. In the latter, the real force and nerves of the ſtate conſiſted. The jealouſy of government did not extend to this department. Nothing was apprehended from this quarter, that could prove formidable to liberty. The ſenate encouraged the nobles to trade, and to ſerve on board the fleet. They became merchants and admirals. They increaſed the wealth of their country by their induſtry. They added to its dominions, by the valour with which they conducted its naval armaments.

SECT. III.

The extent of its commerce.

THE Venetian commerce was an inexhaustible source of opulence. All the nations in Europe depended upon them, not only for the commodities of the East, but for various manufactures fabricated by them alone, or finished with a dexterity and elegance unknown in other countries. From this extensive commerce, the state derived such immense supplies, as concealed these vices in its constitution which I have mentioned; and enabled it to keep on foot such armies, as were not only an over-match for the force which any of its neighbours could bring into the field, but were sufficient to contend, for some time, with the powerful monarchs beyond the Alps. During its struggles with the Princes united against it by the league of Cambray, the republick levied sums which, even in the present age, would be deemed considerable; and while the King of France paid the exorbitant interest which I have mentioned for the money advanced to him, and the Emperor eager to borrow, but destitute of credit, was known by the name of *Maximilian the Money-less*, the Venetians raised whatever sums they pleased, at the moderate premium of five in the hundred [e].

The constitution of Florence.

THE constitution of Florence was perfectly the reverse of that of Venice. It partook as much of the democratical turbulence and licentiousness, as

[e] Hist. de la ligue faite a Cambray par M. l'Abbé du Bos. lib. v. Sandi Storia Civil Veneziana, lib. viii. c. 16. p. 891, &c.

the

the other of ariſtocratical rigour. Florence, however, was a commercial, not a military democracy. The nature of its inſtitutions were favourable to commerce, and the genius of the people was turned towards it. The vaſt wealth which the family of Medici had acquired by trade; together with the magnificence, the generoſity, and the virtue of the firſt Coſmo, gave him ſuch an aſcendant over the affections as well as the councils of his countrymen, that though the forms of popular government were preſerved, though the various departments of adminiſtration were filled by magiſtrates diſtinguiſhed by the ancient names, and elected in the uſual manner, he was in reality the head of the commonwealth, and in the ſtation of a private citizen he poſſeſſed ſupreme authority. Coſmo tranſmitted a conſiderable degree of this power to his deſcendants; and during the greater part of the fifteenth century, the political ſtate of Florence was extremely ſingular. The appearance of republican government ſubſiſted, the people were paſſionately attached to it, and on ſome occaſions contended warmly for their privileges, and yet they permitted a ſingle family to aſſume a direction of their affairs, almoſt as abſolute as if it had been formally inveſted with ſovereign power. The jealouſy of the Medici concurred with the commercial ſpirit of the Florentines, in putting the military force of the republick upon the ſame footing with that of the other Italian ſtates. The troops, which the Florentines employed in their

SECT. III. wars, consisted almost entirely of mercenary soldiers, furnished by the *Condottieri*, or leaders of bands, whom they took into their pay.

The constitution of the kingdom of Naples.

In the kingdom of Naples, to which the sovereignty of the island of Sicily was annexed, the feudal government was established in the same form, and with the same defects, as in the other nations of Europe. The frequent and violent revolutions which happened in that monarchy, had considerably increased these defects, and rendered them more intolerable. The succession to the crown of Naples had been so often interrupted or altered, and so many Princes of foreign blood had taken possession of the throne, that the Neapolitan nobility had lost, in a great measure, that attachment to the family of their sovereigns, as well as that reverence for their persons, which, in other feudal kingdoms, contributed to set some bounds to the encroachments of the barons upon the royal prerogative and power. At the same time, the different pretenders to the crown, being obliged to court the barons who adhered to them, and on whose support they depended for the success of their claims, they augmented their privileges by liberal concessions, and connived at their boldest usurpations. Even when seated on the throne, it was dangerous for a Prince, who held his sceptre by a disputed title, to venture on any step towards extending his own power, or circumscribing that of the nobles.

FROM all theſe cauſes, the kingdom of Naples was the moſt turbulent of any in Europe, and the authority of its Monarchs the leaſt extenſive. Though Ferdinand I. who began his reign in the year one thouſand four hundred and ſixty-eight, attempted to break the power of the ariſtocracy; though his ſon Alfonſo, that he might cruſh it at once by cutting off the leaders of greateſt reputation and influence among the Neapolitan barons, ventured to commit one of the moſt perfidious and cruel actions recorded in hiſtory; the order of nobles was nevertheleſs more exaſperated than humbled by their meaſures[f]. The reſentment which theſe outrages excited was ſo violent, and the power of the malecontent nobles was ſtill ſo formidable, that to theſe may be aſcribed, in a great degree, the eaſe and rapidity with which Charles VIII. conquered the kingdom of Naples[g]. A. D. 1487.

State of the diſpute concerning the right of ſucceſſion to the crown.

THE event that gave riſe to the violent conteſts concerning the ſucceſſion to the crown of Naples and Sicily, which brought ſo many calamities upon theſe kingdoms, happened in the thirteenth century. Upon the death of the Emperor Frederick II. Manfred his natural ſon aſpiring to the Neapolitan throne, murdered his brother the Emperor Conrad (if we may believe contemporary hiſtorians) and by that crime obtained poſſeſſion of it[h]. The Popes, from their implacable enmity A. D. 1254.

[f] Giannone, book xxviii. chap. 2. vol. ii. p. 410, &c.

[g] Giannone, ibid. p. 414.

[h] Struv. corp. hiſt. Germ. i. 481. Giannone, book xviii. ch. 5.

SECT. III. to the houſe of Swabia, not only refuſed to recognize Manfred's title, but endeavoured to excite againſt him ſome rival capable of wreſting the ſceptre out of his hand. Charles Count of Anjou, the brother of St. Louis King of France, undertook this; and he received from the Popes, the inveſtiture of the kingdom of Naples and Sicily as a fief held of the Holy See. The Count of Anjou's efforts were crowned with ſucceſs; Manfred fell in battle; and he took poſſeſſion of the vacant throne. But ſoon after, Charles ſullied the glory which he had acquired, by the injuſtice and cruelty with which he put to death, by the hands of the executioner, Conradin, the laſt Prince of the houſe of Swabia, and the rightful heir of the Neapolitan crown. That gallant young Prince aſſerted his title, to the laſt, with a courage, worthy of a better fate. On the ſcaffold, he declared Peter, at that time Prince, and ſoon after King of Aragon, who had married Manfred's only daughter, his heir; and throwing his glove among the people, he entreated that it might be carried to Peter as the ſymbol by which he conveyed all his rights to him [i]. The deſire of avenging the inſult offered to royalty by the death of Conradin concurred with ambition, in prompting Peter to take arms in ſupport of the title, which he had acquired. From that period, during almoſt two centuries, the houſes of Aragon and Anjou contended for the crown of Naples. Amidſt a ſucceſſion of revolutions more rapid, as well as of

[i] Giannone, book xix. ch. 4. § 2.

crimes

crimes more atrocious, than what occur in the hiſtory of almoſt any other kingdom, Monarchs ſometimes of the Aragoneſe line, and ſometimes of the Angevin, were ſeated on the throne. At length the Princes of the houſe of Aragon obtained ſuch firm poſſeſſion of this long-diſputed inheritance, that they tranſmitted it quietly to a baſtard branch of their family[k]. Sect. III. A. D. 1434.

Pretenſions of the French and Spaniſh Monarchs.

The race of the Angevin Kings, however, was not extinct; nor had they relinquiſhed their title to the Neapolitan crown. The Count of Maine and Provence, the heir of this family, conveyed all his rights and pretenſions to Louis XI. and to his ſucceſſors. Charles VIII, as I have already related, croſſed the Alps at the head of a powerful army, in order to proſecute his claim with a degree of vigour far ſuperior to that, which the Princes from whom he derived it, had been capable of exerting. The rapid progreſs of his arms in Italy, as well as the ſhort time during which he enjoyed the fruits of his ſucceſs, are well known. Frederick, the heir of the illegitimate branch of the Aragoneſe family, ſoon recovered the throne of which Charles had diſpoſſeſſed him. Louis XII. and Ferdinand of Aragon united againſt this Prince, whom both, though for different reaſons, conſidered as an uſurper, and agreed to divide his dominions between them. Frederick, unable to reſiſt the combined Monarchs, each of whom was far his ſuperior in power, reſigned his ſceptre. A. D. 1494. A. D. 1501.

k Giannone, book xxvi. ch. 2.

SECT. III. Louis and Ferdinand, though they had concurred in making the conqueſt, differed about the diviſion of it; and from allies became enemies. But Gonſalvo de Cordova, partly by the exertion of ſuch military talents as gave him a juſt title to the appellation of the *Great Captain*, which the Spaniſh hiſtorians have beſtowed upon him; and partly by ſuch ſhameleſs and frequent violations of the moſt ſolemn engagements, as leave an indelible ſtain on his memory; ſtripped the French of all that they poſſeſſed in the Neapolitan dominions, and ſecured the peaceable poſſeſſion of them to his maſter. Theſe, together with his other kingdoms, Ferdinand tranſmitted to his grandſon Charles V, whoſe right to poſſeſs them, if not altogether uncontravertible, ſeems, at leaſt, to be as well founded as that, which the Kings of France ſet in oppoſition to it[1].

State of the dutchy of Milan, and the right of ſucceſſion to it.

THERE is nothing in the political conſtitution, or interior government of the dutchy of Milan, ſo remarkable, as to require a particular explanation. But as the right of ſucceſſion to that fertile province was the cauſe or the pretext of almoſt all the wars carried on in Italy during the reign of Charles V, it is neceſſary to trace theſe diſputes to their ſource, and to inquire into the pretenſions of the various competitors.

[1] Droits des Rois de France au Royaume de Sicile. Mem. de Comin. Edit. de Freſnoy, tom. iv. part ii. p. 5.

DURING

DURING the long and fierce contests excited in Italy by the violence of the Guelf and Ghibelline factions, the family of Visconti rose to great eminence among their fellow-citizens of Milan. As the Visconti had adhered uniformly to the Ghibelline or Imperial interest, they, by way of recompence, received, from one Emperor, the dignity of perpetual vicars of the Empire in Italy [m]: they were created by another, Dukes of Milan, and together with that title, the possession of the city and its territories was bestowed upon them as an hereditary fief [n]. John King of France, among other expedients for raising money, which the calamities of his reign obliged him to employ, condescended to give one of his daughters in marriage to John Galeazzo Visconti the first Duke of Milan, from whom he had received considerable sums. Valentine Visconti one of the children of this marriage married her cousin, Louis Duke of Orleans, the only brother of Charles VI. In their marriage contract, which the Pope confirmed, it was stipulated that, upon failure of heirs-male in the family of Visconti, the dutchy of Milan should descend to the posterity of Valentine and the Duke of Orleans. That event took place. In the year one thousand four hundred and forty-seven, Philip Maria the last Prince of the ducal family of Visconti died. Various competitors pretended to the succession. Charles Duke of Orleans

SECT. III.

Rise and progress of the disputes concerning this.

A.D. 1354.

A.D. 1395.

[m] Petrarch epist. ap. Struv. corp. i. 625.

[n] Leibnit cod. jur. gent. diplom. vol. i. 257.

pleaded

SECT. III. pleaded his right to it, founded on the marriage-contract of his mother Valentine Visconti. Alfonso King of Naples claimed it in consequence of a will made by Philip Maria in his favour. The Emperor contended that, upon the extinction of male issue in the family of Visconti, the fief returned to the superior Lord, and ought to be re-annexed to the Empire. The people of Milan, smitten with that love of liberty which prevailed among the Italian States, declared against the dominion of any master, and established a republican form of government.

But during the struggle among so many competitors, the prize for which they contended was seized by one from whom none of them apprehended any danger. Francis Sforza, the natural son of Jacomuzzo Sforza, whom his courage and abilities had elevated from the rank of a peasant to be one of the most eminent and powerful of the Italian *Condottieri*, having succeeded his father in the command of the adventurers who followed his standard, had married a natural daughter of the last Duke of Milan. Upon this shadow of a title Francis founded his pretensions to the dutchy, which he supported with such talents and valour as placed him at last on the ducal throne. The virtues as well as abilities with which he governed, inducing his subjects to forget the defects in his title, he transmitted his dominions quietly to his son; from whom they descended to his grandson. He was murdered by his grand uncle Ludovico, surnamed

ſurnamed the Moor, who took poſſeſſion of the dutchy; and his right to it was confirmed by the inveſtiture of the Emperor Maximilian in the year one thouſand four hundred and ninety-four °. Sect. III.

Louis XI. who took pleaſure in depreſſing the Princes of the blood, and who admired the political abilities of Francis Sforza, would not permit the Duke of Orleans to take any ſtep in proſecution of his right to the dutchy of Milan. Ludovico the Moor kept up ſuch a cloſe connection with Charles VIII. that, during the greater part of his reign, the claim of the family of Orleans continued to lie dormant. But when the crown of France devolved to Louis XII. Duke of Orleans, he inſtantly aſſerted the rights of his family with the ardour which it was natural to expect. Ludovico Sforza, incapable of contending with ſuch a rival, was ſtripped of all his dominions in the ſpace of a few days. The King, clad in the ducal robes, entered Milan in triumph; and ſoon after, Ludovico having been betrayed by the Swiſs in his pay, was ſent a priſoner into France, and ſhut up in the caſtle of Loches, where he lay unpitied during the remainder of his days. In conſequence of one of the ſingular revolutions which occur ſo frequently in the hiſtory of the Milaneſe, his ſon Maximilian Sforza was placed on the ducal throne, of which he kept poſſeſſion during the reign of

° Ripalm. hiſt. Mediol. lib. vi. 654. ap. Struv. corp. i. 930. Du Mont Corps Diplom. tom. iii. p. ii. 333. ibid.

Louis

SECT. III. A. D. 1512.

Louis XII. But his ſucceſſor Francis I. was too high-ſpirited and enterprizing tamely to relinquiſh his title. As ſoon as he was ſeated upon the throne, he prepared to invade the Milaneſe; and his right of ſucceſſion to it, appears from this detail, to have been more natural and more juſt than that of any other competitor.

It is unneceſſary to enter into any detail with reſpect to the form of government in Genoa, Parma, Modena, and the other inferior States of Italy. Their names, indeed, will often occur in the following hiſtory. But the power of theſe States themſelves was ſo inconſiderable, that their fate depended little upon their own efforts; and the frequent revolutions which they underwent, were brought about by the operations of the Princes who attacked or defended them, rather than by any thing peculiar in their internal conſtitution.

The conſtitution and government of Spain.

Of the great kingdoms on this ſide of the Alps, Spain is one of the moſt conſiderable; and as it was the hereditary domain of Charles V, as well as the chief ſource of his power and wealth, a diſtinct knowledge of its political conſtitution is of capital importance towards underſtanding the tranſactions of his reign.

Conquered by the Vandals,

The Vandals and Goths, who overturned the Roman power in Spain, eſtabliſhed a form of government in that country, and brought in cuſtoms and laws, perfectly ſimilar to thoſe which were

were introduced into the reſt of Europe, by the other victorious tribes which acquired ſettlements there. For ſome time, ſociety advanced, among the new inhabitants of Spain, by the ſame ſteps, and ſeemed to hold the ſame courſe, as in other European nations. To this progreſs, a ſudden ſtop was put by the invaſion of the Saracens or Moors. The Goths could not withſtand the efforts of their enthuſiaſtick valour, which ſubdued Spain, with the ſame impetuous rapidity that diſtinguiſhes all the operations of their arms. The conquerors introduced into the country in which they ſettled the Mahometan religion, the Arabick language, the manners of the Eaſt, together with that taſte for the arts, and that love of elegance and ſplendour, which the Caliphs had begun to cultivate among their ſubjects.

SECT. III.

A. D. 712. and by the Moors.

SUCH Gothick nobles, as diſdained to ſubmit to the Mooriſh yoke, fled for refuge to the inacceſſible mountains of Aſturias. There they comforted themſelves with enjoying the exerciſe of the Chriſtian religion, and with maintaining the authority of their ancient laws. Being joined by many of the boldeſt and moſt warlike among their countrymen, they ſallied out upon the adjacent ſettlements of the Moors, in ſmall parties; but venturing only upon ſhort excurſions at firſt, they were ſatisfied with plunder and revenge, without thinking of conqueſt. By degrees, their ſtrength increaſed, their views enlarged, a regular government was eſtabliſhed among them, and they began to

The Chriſtians gradually recover dominion in Spain.

Sect. III. to aim at extending their territories. While they pushed on their attacks with the unremitting ardour excited by zeal for religion, by the desire of vengeance, and by the hope of rescuing their country from oppression; while they conducted their operations with the courage natural to men who had no other occupation but war, and who were strangers to all the arts which corrupt or enfeeble the mind, the Moors gradually lost many of the advantages, to which they had been indebted for their first success. They threw off all dependence on the Caliphs *; they neglected to preserve a close connection with their contrymen in Africa; their Empire in Spain was split into many small kingdoms; the arts which they cultivated, together with the luxury to which these gave rise, relaxed, in some measure, the force of their military institutions, and abated the vigour of their warlike spirit. The Moors, however, continued still to be a gallant people, and possessed great resources. According to the magnificent stile of the Spanish historians, eight centuries of almost uninterrupted war elapsed, and three thousand seven hundred battles were fought before
1492. the last of the Moorish kingdoms in Spain submitted to the Christian arms.

The union of its various kingdoms.

As the Christians made their conquests upon the Mahometans at various periods, and under different leaders, each formed the territory which he had wrested from the common enemy, into an

* Jos. Sim. Assemanni Histor. Ital. Scriptores. vol. iii. p. 135.

independent

independent State. Spain was divided into as many ſeparate kingdoms, as it contained provinces, and in each city of note, a petty Monarch eſtabliſhed his throne, and aſſumed all the enſigns of royalty. In a ſeries of years, however, by the uſual events of intermarriages, or legal ſucceſſion, or conqueſt, all theſe inferior principalities were annexed to the more powerful kingdoms of Caſtile and of Aragon. At length, by the fortunate marriage of Ferdinand and Iſabella, the former the hereditary Monarch of Aragon, and the latter raiſed to the throne of Caſtile by the affection of her ſubjects, all the Spaniſh crowns were united, and deſcended in the ſame line. 1481.

SECT. III.

Their ancient cuſtoms and laws reſerved amidſt all their revolutions;

FROM this period, the political conſtitution of Spain began to aſſume a regular and uniform appearance; the genius of government may be delineated, and the progreſs of its laws and manners may be traced with certainty. Notwithſtanding the ſingular revolution which the invaſion of the Moors occaſioned in Spain, and the peculiarity of its fate, in being ſo long ſubjected to the Mahometan yoke, the cuſtoms introduced by the Vandals and Goths had taken ſuch deep root, and were ſo thoroughly incorporated with the frame of its government, that in every province which the Chriſtians recovered from the Moors, we find the condition of individuals, as well as the political conſtitution, nearly the ſame as in other nations of Europe. Lands were held by the ſame tenure; juſtice was diſpenſed in the ſame form; the ſame privileges

SECT. III. which renders their ſtate in ſome degree ſimilar to that of other nations of Europe.

privileges were claimed by the nobility; and the ſame power exerciſed by the Cortes, or general aſſembly of the kingdom. Several circumſtances contributed to ſecure this permanence of the feudal inſtitutions in Spain, notwithſtanding the conqueſt of the Moors, which ſeemed to have overturned them. Such of the Spaniards, as preſerved their independence, adhered to their ancient cuſtoms, not only from attachment to them, but out of antipathy to the Moors, to whoſe ideas concerning property and government theſe cuſtoms were totally repugnant. Even among the Chriſtians, who ſubmitted to the Mooriſh conquerors, and conſented to become their ſubjects, ancient cuſtoms were not entirely aboliſhed. They were permitted to retain their religion; their laws concerning private property; their forms of adminiſtering juſtice; and their mode of levying taxes. The followers of Mahomet are the only enthuſiaſts, who have united the ſpirit of toleration with zeal for making proſelytes, and who, at the ſame time that they took arms to propagate the doctrine of their prophet, permitted ſuch as would not embrace it, to adhere to their own tenets, and to practiſe their own rites. To this peculiarity in the genius of the Mahometan religion, as well as to the deſire which the Moors had of reconciling the Chriſtians to their yoke, it was owing that the ancient manners and laws in Spain ſurvived the violent ſhock of a conqueſt, and were permitted to ſubſiſt, notwithſtanding the introduction of a new religion and

and a new form of government into that country. It is obvious from all these particulars, that the Christians must have found it extremely easy to re-establish manners and government on their ancient foundations, in those provinces of Spain, which they wrested successively from the Moors. A considerable part of the people retained such a fondness for the customs, and such a reverence for the laws of their ancestors, that they wished to see them completely restored with full authority, and were not only willing but eager to resume the former, and to recognize the authority of the latter.

SECT. III.

But though the feudal form of government, with all the institutions that characterize it, was thus preserved entire in Castile and Aragon, as well as in all the kingdoms which depended on these crowns, there were certain peculiarities in their political constitutions which distinguish them from those of any other country in Europe. The regal prerogative, extremely limited in every feudal kingdom, was circumscribed, in Spain, within such narrow bounds, as reduced the power of the sovereign almost to nothing. The privileges of the nobility were vast in proportion, and extended so far, as to border on absolute independence. The immunities of the cities were great, they possessed considerable influence in the Cortes or supreme assemblies of the nations, and they aspired at obtaining more. Such a state of society, in which the political machine was so ill adjusted, and

Certain peculiarities in their constitution and laws.

The prerogative more limited, and the immunities of the people more extensive.

Sect. III. and the ſeveral members of the legiſlature ſo improperly balanced, produced interior diſorders in the kingdoms of Spain, which roſe beyond the pitch of turbulence and anarchy, uſual under the feudal government. The whole tenor of the Spaniſh hiſtory confirms the truth of this obſervation; and when the mutinous ſpirit, to which the genius of their policy gave birth and vigour, was no longer reſtrained and overawed by the immediate dread of the Mooriſh arms, it broke out into more frequent inſurrections againſt the government of their Princes, as well as more outrageous inſults on their dignity, than occur in the annals of any other country. Theſe were accompanied at ſome times with more liberal ſentiments concerning the rights of the people, at other times with more elevated notions concerning the privileges of the nobles, than were common in other nations.

Inſtances of this.

In the principality of Catalonia, which was annexed to the kingdom of Aragon, the impatience of the people to obtain the redreſs of their grievances having prompted them to take arms againſt their ſovereign John II, they, by a ſolemn deed, recalled the oath of allegiance which they had ſworn to him, declared him and his poſterity to be unworthy of the throne [p], and endeavoured to eſtabliſh a republican form of government, in order to ſecure the perpetual enjoyment of that

A. D. 1462.

[p] Zurita Anales de Arag. tom. iv. 113. 115, &c.

liberty,

liberty, after which they aſpired [q]. Nearly about the ſame period, the indignation of the Caſtilian nobility againſt the weak and flagitious adminiſtration of Henry IV, having led them to combine againſt him, they arrogated, as one of the privileges belonging to their order, the right of trying and of paſſing ſentence on their ſovereign. That the exerciſe of this power might be as publick and ſolemn, as the pretenſion to it was bold, they ſummoned all the nobility of their party to meet at Avila; a ſpacious theatre was erected in a plain without the walls of the town, an image repreſenting the King, was ſeated on a throne, clad in royal robes, with a crown on its head, a ſceptre in its hand, and the ſword of juſtice by its ſide. The accuſation againſt the King was read, and the ſentence of depoſition was pronounced, in preſence of a numerous aſſembly. At the cloſe of the firſt article of the charge, the archbiſhop of Toledo advanced, and tore the crown from the head of the image; at the cloſe of the ſecond, the Conde de Placentia ſnatched the ſword of juſtice from its ſide; at the cloſe of the third, the Conde de Beneventè wreſted the ſceptre from its hand; at the cloſe of the laſt, Don Diego Lopes de Stuniga tumbled it headlong from the throne. At the ſame inſtant, Don Alfonſo, Henry's brother, was proclaimed King of Caſtile and Leon in his ſtead [r].

Sect. III.

A. D. 1465.

[q] Ferreras hiſt. d'Eſpagne, tom. vii. p. 92. P. Orleans revol. d'Eſpagne, tom. iii. p. 155. L. Marinæus Siculus de reb. Hiſpan. apud Schotti Script. Hiſpan. vol. 429.

[r] Marian. hiſt. lib. xxiii. c. 9.

SECT. III.

THE most daring leaders of faction would not have ventured on these measures, nor have conducted them with such publick ceremony, if the sentiments of the people concerning the royal dignity, had not been so formed by the laws and policy, to which they were accustomed both in Castile and Aragon, as prepared them to approve of such extraordinary proceedings, or to acquiesce in them.

The constitution and government of Aragon.

IN Aragon, the form of government was monarchical, but the genius and maxims of it were purely republican. The Kings, who were long elective, retained only the shadow of power; the real exercise of it was in the Cortes or parliament of the kingdom. This supreme assembly was composed of four different *arms* or members. The nobility of the first rank. The Equestrian order, or nobility of the second class. The representatives of the cities and towns, whose right to a place in the Cortes, if we may give credit to the historians of Aragon, was coeval with the constitution. The ecclesiastical order, composed of the dignitaries of the church, together with the representatives of the inferior clergy[s]. No law could pass in this assembly without the assent of every single member who had a right to vote[t]. Without the permission of the Cortes, no tax could be imposed; no war could be declared; no peace concluded; no money could be coined; nor any alteration be made

[s] Forma de celebrar Cortes en Aragon. por Geron. Martel.
[t] Martel. ibid. p. 2.

made in the current ſpecie[u]. The power of reviewing the proceedings of all inferior courts, the privilege of inſpecting every department of adminiſtration, and the right of redreſſing all grievances, belonged to the Cortes. Nor did thoſe who conceived themſelves to be aggrieved, addreſs the Cortes in the humble tone of ſupplicants, and petition for redreſs; they demanded it as the birthright of freemen, and required the guardians of their liberty to decide with reſpect to the points which they laid before them[x]. This ſovereign court was held, during ſeveral centuries, every year; but, in conſequence of a regulation introduced about the beginning of the fourteenth century, it was convoked from that period only once in two years. After it was aſſembled, the King had no right to prorogue or diſſolve it without its own conſent; and the ſeſſion continued forty days[y]. Sect. III.

Not ſatisfied with having erected theſe barriers againſt the encroachments of the royal prerogative, nor willing to rely for the preſervation of their liberties on the vigilance and authority of an aſſembly, ſimilar to the diets, ſtates-general, and parliaments, in which the other feudal nations placed ſo much confidence, the Aragoneſe had recourſe to an inſtitution peculiar to themſelves, and elected a *Juſtiza* or ſupreme judge. This magiſ- Office and juriſdiction of the Juſtiza.

[u] Hier. Blanca comment. rer. Aragon. ap. Schot. Script. Hiſpan. vol. iii. p. 750.

[x] Martel. Forma de celebr. p. 2.

[y] Hier. Blanca comment. 763.

SECT. III trate, whofe office bore fome refemblance to that of the Ephori in ancient Sparta, acted as the guardian of the people, and the comptroller of the Prince. The perfon of the Juftiza was facred, and his power and jurifdiction almoft unbounded. He was the fupreme interpreter of the laws. Not only inferior judges, but the Kings themfelves were bound to confult him in every doubtful cafe, and to receive his refponfes with implicit deference*. An appeal lay to him from the royal judges, as well as from thofe appointed by the barons within their refpective territories. Even when no appeal was made to him, he could interpofe by his own authority, prohibit the ordinary judge to proceed, take immediate cognizance of the caufe himfelf, and remove the party accufed to the *Manifeftation* or prifon of the ftate, to which no perfon had accefs but by his permiffion. His power was exerted with no lefs vigour and effect in fuperintending the adminiftration of government, than in regulating the courfe of juftice. It was the prerogative of the Juftiza to infpect the conduct of the King. He had a title to review all the royal proclamations and patents, and to declare whether or not they were agreeable to law, and ought to be carried into execution. He, by his fole authority, could exclude any of the King's minifters from the conduct of affairs, and call them to anfwer for

* Blanca has preferved two refponfes of the Juftiza to James II. who reigned towards the clofe of the thirteenth century, Blanca 748.

their

their mal-adminiſtration. He himſelf was accountable to the Cortes alone, for the manner in which he diſcharged the duties of this high office, and performed functions of the greateſt importance that could be committed to a ſubject [HH] [z]. SECT. III.

It is evident from a bare enumeration of the privileges of the Aragoneſe Cortes, as well as of the rights belonging to the Juſtiza, that a very ſmall portion of power remained in the hands of the King. The Aragoneſe ſeem to have been ſolicitous that their Monarchs ſhould know and feel this ſtate of impotence, to which they were reduced. Even in ſwearing allegiance to their ſovereign, an act which ought, naturally, to be accompanied with profeſſions of ſubmiſſion and reſpect, they deviſed an oath, in ſuch a form, as to remind him of his dependence on his ſubjects. "We," ſaid the Juſtiza to the King in name of his high-ſpirited barons, "who are each of us as good, and who are altogether more powerful than you, promiſe obedience to your government, if you maintain our rights and liberties; but if not, not." Conformably to this oath, they eſtabliſhed it as a fundamental article in their conſtitution, that if the King ſhould violate their rights and privileges, it was lawful for the people to diſclaim him as their ſovereign, and to elect another, even though a heathen, in his place [a]. The attachment of the

The regal power circumſcribed within narrow limits.

[HH] NOTE XXXI.

[z] Hier. Blanca Comment. p. 747—755.

[a] Hier. Blanca Comment. 720.

SECT. III. Aragoneſe to this ſingular conſtitution of government, was extreme, and their reſpect for it approached to ſuperſtitious veneration [II]. In the preamble to one of their laws, they declare, that ſuch was the barrenneſs of their country, and the poverty of the inhabitants, that, if it were not on account of the liberties by which they were diſtinguiſhed from other nations, the people would abandon it, and go in queſt of a ſettlement to ſome more fruitful region [b].

Conſtitution and government of Caſtile.

IN Caſtile, there were not ſuch peculiarities in the form of government, as to eſtabliſh any remarkable diſtinction between it and that of the other European nations. The executive part of government was committed to the King, but with a prerogative extremely limited. The legiſlative authority reſided in the Cortes, which was compoſed of the nobility, the dignified eccleſiaſticks, and the repreſentatives of the cities. The aſſembly of the Cortes in Caſtile was very ancient, and ſeems to have been coeval with the conſtitution. The members of the three different orders, who had a right of ſuffrage, met in one place, and deliberated as one collective body; the deciſions of which were regulated by the ſentiments of the majority. The right of impoſing taxes, of enacting laws, and of redreſſing grievances belonged to this aſſembly; and in order to ſecure the aſſent of the King to ſuch ſtatutes and regulations as were deem-

[II] NOTE XXXII.

[b] Hier. Blanca Com. p. 751.

ed

ed salutary or beneficial to the kingdom, it was usual in the Cortes, to take no step towards granting money, until all business relative to the publick welfare was concluded. The representatives of cities seem to have obtained a seat very early in the Cortes of Castile, and soon acquired such influence and credit, as were very uncommon, at a period when the splendor and pre-eminence of the nobility had eclipsed or annihilated all other orders of men. The number of members from cities, bore such a proportion to that of the whole collective body, as rendered them extremely respectable in the Cortes [KK]. The degree of consideration, which they possessed in the state, may be estimated by one event. Upon the death of John I. a council of regency was appointed to govern the kingdom during the minority of his son. It was composed of an equal number of noblemen, and of deputies chosen by the cities; the latter were admitted to the same rank, and invested with the same powers, as prelates and grandees of the first order[c]. But though the members of communities in Castile were elevated above the condition wherein they were placed in other kingdoms of Europe; though they had attained to such political importance, that even the proud and jealous spirit of the feudal aristocracy could not exclude them from a considerable share in government; yet the nobles, notwithstanding these acquisitions of the commons, continued to assert the privileges of

A.D. 1390.

[KK] NOTE XXXIII.

[c] Marian. hist. lib. xviii. c. 15.

their

SECT. III. their order, in oppoſition to the crown, in a tone extremely high. There was not any body of nobility in Europe more diſtinguiſhed for independence of ſpirit, haughtineſs of deportment, and bold pretenſions, than that of Caſtile. The hiſtory of that monarchy affords the moſt ſtriking examples of the vigilance with which they obſerved, and of the vigour with which they oppoſed every ſcheme of their Kings, that tended to encroach on their juriſdiction, to diminiſh their dignity, or to abridge their power. Even in their ordinary intercourſe with their Monarchs, they preſerved ſuch a conſcioufneſs of their rank, that the nobles of the firſt order claimed it as a privilege to be covered in the royal preſence, and approached their ſovereigns rather as equals than as ſubjects.

THE conſtitution of the ſubordinate monarchies, which depended on the crowns of Caſtile and Aragon, nearly reſembled that of the kingdom to which they were annexed. In all of them, the dignity and independence of the nobles were great; the immunities and power of the cities were conſiderable.

Various cauſes of the limited authority of the Spaniſh Monarchs.

AN attentive obſervation of the ſingular ſituation of Spain, as well as the various events which occured there, from the invaſion of the Moors to the union of its kingdoms under Ferdinand and Iſabella, will diſcover the cauſes, to which all the peculiarities in its political conſtitution, that I have pointed out, ought to be aſcribed.

As

As the provinces of Spain were wrested from the Mahometans gradually and with difficulty, the nobles, who followed the standard of any eminent leader in these wars, conquered not for him alone, but for themselves. They claimed a share in the lands which their valour had torn from the enemy, and their prosperity and power increased, in proportion as the territory of the Prince extended. SECT. III.

During their perpetual wars with the Moors, the Monarchs of Spain depended so much on their nobles, that it became necessary to conciliate their good-will by successive grants of new honours and privileges. By the time that any Prince could establish his dominion in a conquered province, the greater part of the property was parcelled out by him among his barons, with such jurisdiction and immunities, as raised them almost to sovereign power.

At the same time, the kingdoms erected in so many different corners of Spain, were extremely inconsiderable. The petty Monarch was but little elevated above his nobles. They, feeling themselves to be almost his equals, acted as such. The Kings of such limited domains could neither command much respect, nor possess great power; and noblemen, so nearly on the same level, could not look up to them with that reverence, with which the sovereigns of the great monarchies in Europe were viewed by their subjects [LL].

[LL] NOTE XXXIV.

Sect. III. These circumſtances concurred in exalting the nobility, and in depreſſing the royal authority; there were other cauſes which raiſed the cities in Spain to conſideration and power.

As the open country, during the wars with the Moors, was perpetually expoſed to the excurſions of the enemy, with whom no peace or truce was ſo permanent as to prove any laſting ſecurity, ſelf-preſervation obliged perſons of all ranks to fix their reſidence in places of ſtrength. The caſtles of the barons, which, in other countries, afforded a commodious retreat from the depredations of banditti, or from the tranſient violence of any interior commotion, were unable to reſiſt an enemy whoſe operations were conducted with regular and perſevering vigour. Cities, in which great numbers united for their mutual defence, were the only places in which people could fix their reſidence with any proſpect of ſafety. To this was owing the rapid growth of thoſe cities in Spain of which the Chriſtians recovered poſſeſſion. All who fled from the Mooriſh yoke reſorted to them, as to an aſylum; and there, the greater part of thoſe, who took the field againſt the Mahometans, eſtabliſhed their families.

Each of theſe cities, during a longer or ſhorter courſe of years, was the capital of a little ſtate, and enjoyed all the advantages, which accelerate the increaſe of inhabitants in every place that is the ſeat of government.

The

THE number of cities in Spain, at the beginning of the fifteenth century, was confiderable, and they were peopled far beyond the proportion which was common in other parts of Europe, except in Italy and the Low-Countries. The Moors had introduced manufactures into thefe cities, while under their dominion. The Chriftians, who, by intermixture with them, had learned their arts, continued to cultivate thefe. The trade of feveral of the Spanifh towns appears to have been confiderable; and the fpirit of commerce continued to preferve the number of their inhabitants, as the fenfe of danger had firft induced them to crowd together. SECT. III.

As the Spanifh cities were populous, many of the inhabitants were of a rank fuperior to thofe who refided in towns in other countries of Europe. That caufe, which contributed chiefly to their population, affected equally perfons of every condition, who flocked thither promifcuoufly, in order to find fhelter, or in hopes of making a ftand there againft the enemy, with greater advantage than in any other ftation. The perfons elected as their reprefentatives in the Cortes by the cities, or promoted to offices of truft and dignity in the government of the community, were often, as will appear from tranfactions which I fhall hereafter relate, of fuch confiderable rank in the kingdom, as reflected luftre on their conftituents, and on the ftations wherein they were placed.

As

SECT. III.

As it was impoſſible to carry on a continual war againſt the Moors, without ſome other military force, than that which the barons were obliged to bring into the field, in conſequence of the feudal tenures, it became neceſſary to have ſome troops, particularly a body of light cavalry, in conſtant pay. It was one of the privileges of the nobles, that their lands were exempt from the burden of taxes. The charge of ſupporting the troops requiſite for the publick ſafety, fell wholly upon the cities; and their Kings, being obliged frequently to apply to them for aid, found it neceſſary to gain their favour by conceſſions, which extended their immunities, and added to their wealth and power.

WHEN the influence of all theſe circumſtances, peculiar to Spain, is added to the general and common cauſes, which contributed to aggrandize cities in other countries of Europe, this will fully account for the extenſive privileges which they acquired, as well as for the extraordinary conſideration to which they attained, in all the Spaniſh kingdoms [MM].

Meaſures of different Princes in order to extend their power;

BY theſe exorbitant privileges of the nobility, and this unuſual power of the cities in Spain, the royal prerogative was hemmed in on every ſide, and reduced within very narrow bounds. Senſible of this, and impatient of ſuch reſtraint, different Monarchs endeavoured, at various junctures, to enlarge their own juriſdiction, and to circumſcribe

[MM] NOTE XXXV.

that of their ſubjects. Their power, however, or their abilities were ſo unequal to the undertaking, that their efforts were attended with little ſucceſs. But when Ferdinand and Iſabella found themſelves at the head of all the united kingdoms of Spain, and delivered from the danger and interruption of domeſtick wars, they were not only in a condition to reſume, but were able to proſecute with advantage, the ſchemes of extending the prerogative, which their anceſtors had attempted in vain. Ferdinand's profound ſagacity in concerting his meaſures, his perſevering induſtry in conducting them, and his uncommon addreſs in carrying them into execution, fitted him admirably for an undertaking which required all theſe talents.

Particularly of Ferdinand and Iſabella.

As the overgrown power, and high pretenſions of the nobility were what the Monarchs of Spain felt moſt ſenſibly, and bore with the greateſt impatience, the great object of Ferdinand's policy was to reduce theſe within more moderate bounds. Under various pretexts, ſometimes by violence, more frequently in conſequence of decrees obtained in the courts of law, he wreſted from the barons a great part of the lands, which had been granted to them by the inconſiderate bounty of former Monarchs, particularly during the feeble and profuſe reign of his predeceſſor Henry IV. He did not give the entire conduct of affairs to perſons of noble birth, who were accuſtomed to occupy every department of importance in peace or in war, as if it had been a privilege peculiar to their

Ferdinand's different ſchemes for abridging the privileges and power of the nobility.

SECT. III. their order, to be employed as the ſole counſellors and miniſters of the crown. He often tranſacted buſineſs of great conſequence without their intervention, and committed many offices of power and truſt to new men, devoted to his intereſt [d]. He introduced a degree of ſtate and dignity into his court, which being unknown in Spain, while it remained ſplit into many ſmall kingdoms, taught the nobles to approach their ſovereign with more ceremony, and gradually rendered him the object of greater deference and reſpect.

Particularly by annexing the grand-maſterſhips of the three orders to the crown;

THE annexing the maſterſhips of the three military orders of St. Jago, Calatrava, and Alcantara, to the crown, was another expedient, by which Ferdinand greatly augmented the revenue and power of the Kings of Spain. Theſe orders were inſtituted in imitation of thoſe of the Knights Templars and of St. John of Jeruſalem, on purpoſe to wage perpetual war with the Mahometans, and to protect the pilgrims who viſited Compoſtella, or other places of eminent ſanctity in Spain. The zeal and ſuperſtition of the ages, in which they were founded, prompted perſons of every rank to beſtow ſuch liberal donations on theſe holy warriors, that, in a ſhort time, they engroſſed a conſiderable ſhare in the property and wealth of the kingdom. The maſterſhips of theſe orders came to be ſtations of the greateſt power and opulence to which a Spaniſh nobleman could be advanced. Theſe high dignities were in the diſpoſal

[d] Zurita anales de Arag. tom. vi. p. 22.

of

of the Knights of the Order, and placed the persons on whom they conferred them almost on a level with their sovereign [NN]. Ferdinand, unwilling that the nobility, whom he considered as already too formidable, should derive such additional credit and influence from possessing the government of these wealthy fraternities, was solicitous to wrest it out of their hands, and to vest it in the crown. His measures for accomplishing this, were wisely planned, and executed with vigour [e]. By address, by promises, and by threats, he prevailed on the Knights of each Order to place Isabella and him at the head of it. Innocent VIII. and Alexander VI. gave this election the sanction of papal authority [f]; and subsequent Pontiffs rendered the annexation of these masterships to the crown perpetual.

Sect. III.

A. D. 1476, and 1493.

While Ferdinand, by this measure, diminished the power and influence of the nobility, and added new lustre or authority to the crown, he was taking other important steps with a view to the same object. The sovereign jurisdiction which the feudal barons exercised within their own territories, was the pride and distinction of their order. To have invaded openly a privilege which they prized so highly, and in defence of which they would

And by circumscribing the jurisdiction of the nobility.

[NN] NOTE XXXVI.

[e] Marian. hist. lib. xxv. c. 5.

[f] Zurita anales tom. v. p. 22. Ælii. Anton. Nebrissensis rerum a Ferdinand & Elizabe gestarum decades. ii. apud Schot. script. Hispan. i. 860.

Sect. III. have run ſo eagerly to arms, was a meaſure too daring for a Prince of Ferdinand's cautious temper. He took advantage, however, of an opportunity which the ſtate of his kingdoms and the ſpirit of his people preſented him, in order to undermine what he durſt not aſſault. The inceſſant depredations of the Moors, the want of diſcipline among the troops which were employed to oppoſe them, the frequent civil wars between the crown and the nobility, as well as the undiſcerning rage with which the barons carried on their private wars with each other, filled all the provinces of Spain with diſorder. Rapine, outrage, and murder, became ſo common, as not only to interrupt commerce, but in a great meaſure to ſuſpend all intercourſe between one place and another. That ſecurity and protection which men expect from entering into civil ſociety, ceaſed almoſt totally. Interior order and police, while the feudal inſtitutions remained in vigour, were ſo little objects of attention, and the adminiſtration of juſtice was ſo extremely feeble, that it would have been vain to have expected relief from the eſtabliſhed laws or the ordinary judges. But the evil became ſo intolerable, and the inhabitants of cities, who were the chief ſufferers, grew ſo impatient of this anarchy, that ſelf-preſervation forced them to have
1260. recourſe to an extraordinary remedy. About the middle of the thirteenth century, the cities in the kingdom of Aragon, and after their example thoſe in Caſtile, formed themſelves into an aſſociation,

ciation, diftinguifhed by the name of the *Holy* SECT. III.
Brotherhood. They exacted a certain contribution from each of the affociated towns; they levied a confiderable body of troops, in order to protect travellers, and to purfue criminals; they appointed judges, who opened their courts in various parts of the kingdom. Whoever was guilty of murder, robbery, or of any act that violated the publick peace, and was feized by the troops of the *Brotherhood*, was carried before their own judges, who, without paying any regard to the exclufive and fovereign jurifdiction which the lord of the place might claim, tried and condemned the criminals. By means of this, the prompt and impartial adminiftration of juftice was reftored; and together with it, internal tranquillity and order began to return. The nobles alone murmured at this falutary inftitution. They complained of it as an encroachment on one of their moft valuable privileges. They remonftrated againft it in an high tone; and, on fome occafions, refufed to grant any aid to the crown, unlefs it were abolifhed. Ferdinand, however, was fenfible not only of the good effects of the Holy Brotherhood with refpect to the police of his kingdoms, but perceived its tendency to abridge, and at length to annihilate the territorial jurifdiction of the nobility. He countenanced the inftitution on every occafion. He fupported it with the whole force of royal authority; and befides the expedients employed by him in common with the other monarchs of Eu-

SECT. III. rope, he availed himſelf of this inſtitution, which was peculiar to his kingdom, in order to limit and aboliſh that independent juriſdiction of the nobility, which was no leſs inconſiſtent with the authority of the Prince, than with the order of ſociety [OO].

Notwithſtanding all theſe, the government of Spain ſtill extremely free.

BUT though Ferdinand by theſe meaſures conſiderably enlarged the boundaries of prerogative, and acquired a degree of influence and power far beyond what any of his predeceſſors had enjoyed, yet the limitations of the royal authority, and the barriers againſt its encroachments, continued to be many and ſtrong. The ſpirit of liberty was vigorous among the people of Spain; the ſpirit of independence was high among the nobility; and though the love of glory, peculiar to the Spaniards in every period of their hiſtory, prompted them to ſupport Ferdinand with zeal in his foreign operations, and to afford him ſuch aid as enabled him not only to undertake but to execute great enterprizes; he reigned over his ſubjects with a juriſdiction leſs extenſive than that of any of the great monarchs in Europe. It will appear from many paſſages in the following hiſtory, that, during a conſiderable part of the reign of his ſucceſſor Charles V. the prerogative of the Spaniſh crown was equally circumſcribed.

Conſtitution and government of France.

THE ancient government and laws in France ſo nearly reſembled thoſe of the other feudal kingdoms,

[OO] NOTE XXXVII.

doms, that ſuch a detail with reſpect to them as was neceſſary, in order to convey ſome idea of the nature and effects of the peculiar inſtitutions which took place in Spain, would be ſuperfluous. In the view which I have exhibited of the means by which the French monarchs acquired ſuch full command of the national force of their kingdom, as enabled them to engage in extenſive ſchemes of foreign operation, I have already pointed out the great ſteps by which they advanced towards a more ample poſſeſſion of political power, and a more uncontrouled exerciſe of their royal prerogative. All that now remains is to take notice of ſuch particulars in the conſtitution of France, as ſerve either to diſtinguiſh it from that of other countries, or tend to throw any light on the tranſactions of that period to which the following hiſtory extends. SECT. III.

UNDER the French monarchs of the firſt race, the royal prerogative was very inconſiderable. The General Aſſemblies of the nation, which met annually at ſtated ſeaſons, extended their authority to every department of government. The power of electing Kings, of enacting laws, of redreſſing grievances, of paſſing judgment in the laſt reſort, with reſpect to every perſon and to every cauſe, and of conferring donations on the Prince, reſided in this great convention of the nation. Under the ſecond race of Kings, notwithſtanding the power and ſplendour which the conqueſts of Charlemagne added to the crown, the general aſſemblies

Power of the General Aſſemblies under the firſt race of Kings.

Under the ſecond.

SECT. III. assemblies of the nations continued to possess extensive authority. The right of determining which of the royal family should be placed on the throne, was vested in them. The Princes elevated to that dignity by their suffrage were accustomed regularly to call and to consult them with respect to every affair of importance to the state, and without their consent no law was passed, and no new tax was levied.

Under the third.

BUT, by the time that Hugh Capet, the father of the third race of Kings, took possession of the throne of France, such changes had happened in the political state of the kingdom, as considerably affected the power and jurisdiction of the general assembly of the nation. The royal authority in the hands of the degenerate posterity of Charlemagne, had dwindled into insignificance and contempt. Every considerable proprietor of land had formed his territory into a barony, almost independent of the sovereign. The dukes or governors of provinces, the counts or governors of towns and small districts, and the great officers of the crown, had rendered these dignities, originally granted only during pleasure or for life, hereditary in their families. Each of these had usurped all the rights which hitherto had been deemed the distinctions of royalty, particularly the privileges of dispensing justice within their own domains, of coining money, and of waging war. Every district was governed by local customs, acknowledged a distinct lord, and pursued a separate interest. The formality of doing homage to their sovereign, was almost

almost the only act of subjection which haughty barons would perform, and that bound them no farther than they were willing to acknowledge its obligation [PP]. SECT. III.

In a kingdom broken into so many independent baronies, hardly any common principle of union remained; and the general assembly in its deliberations could scarce consider the nation as forming one body, or establish common regulations to be of equal force in every part. Within the immediate domains of the crown the King might publish laws, and they were obeyed, because there he was acknowledged as the only lord. But if he had aimed at rendering these general, that would have alarmed the barons as an encroachment upon the independence of their jurisdiction. The barons, with no less care, avoided the enacting of general laws, because the execution of them must have been vested in the King, and would have enlarged that paramount power, which was the object of their jealousy. Thus, under the descendants of Hugh Capet, the States General (for that was the name by which the supreme assembly of the French nation came then to be distinguished) lost their legislative authority, or at least entirely relinquished the exercise of it. From that period, the jurisdiction of the States General extended no farther than to the imposition of new taxes, the determination of questions with respect to the right of succession

The power of the General Assembly less considerable and extensive.

[PP] NOTE XXXVIII.

SECT. III. to the crown, the settling of the regency when the preceding monarch had not fixed it by his will, and the presenting remonstrances enumerating the grievances of which the nation wished to obtain redress.

As, during several centuries, the monarchs of Europe seldom demanded extraordinary subsidies of their subjects, and the other events which required the interposition of the States, rarely occurred, their meetings in France were not frequent. They were summoned occasionally by their Kings, when compelled by their wants or by their fears to have recourse to their aid; but they did not, like the Diet in Germany, the Cortes in Spain, or the Parliament in England, form an essential member of the constitution, the regular exertion of whose powers was requisite to give vigour and order to government.

The crown begins to acquire legislative authority,

WHEN the States of France ceased to exercise legislative authority, the Kings began to assume it. They ventured at first on acts of legislation with great reserve; and after taking every precaution that could prevent their subjects from being alarmed at the exercise of a new power. They did not at once issue their ordinances in a tone of authority and command. They treated with their subjects; they pointed out what was best; and allured them to comply with it. By degrees, however, as the prerogative of the crown extended, and as the supreme jurisdiction of the royal courts came to be established,

established, the Kings of France aſſumed more openly the ſtile and authority of law-givers; and before the beginning of the fifteenth century, the complete legiſlative power was veſted in them [QQ]. Sect. III.

Having ſecured this important acquiſition, the ſteps that led to the right of impoſing taxes were rendered few and eaſy. The people, accuſtomed to ſee their ſovereigns, by their ſole authority, iſſue ordinances which regulated points of the greateſt conſequence with reſpect to the property of their ſubjects, were not alarmed when they were required, by the royal edicts, to contribute certain ſums towards ſupplying the exigencies of government, and carrying forward the meaſures of the nation. When Charles VII. and Louis XI. firſt ventured to exerciſe this new power, in the manner which I have already deſcribed, the gradual increaſe of the royal authority had ſo imperceptibly prepared the minds of the people of France for this innovation, that it excited no commotion in the kingdom, and ſeems ſcarcely to have given riſe to any murmur or complaint. and the power of levying taxes.

When the Kings of France had thus engroſſed every power which can be exerted in government; when the right of making laws, of levying money, of keeping an army of mercenaries in conſtant pay, of declaring war and of concluding peace Government of France becomes purely monarchical.

[QQ] NOTE XXXIX.

centered

SECT. III. centered in the crown, the conſtitution of the kingdom, which, under the firſt race of Kings, was nearly democratical, which, under the ſecond race, became an ariſtocracy, terminated, under the third race, in a pure monarchy. Every thing that tended to preſerve the appearance, or revive the memory of the ancient mixed government, ſeems from that period to have been induſtriouſly avoided. During the long and active reign of Francis I. the variety as well as extent of whoſe operations obliged him to lay many heavy impoſitions on his ſubjects, the States General of France were not once aſſembled, nor were the people once allowed to exert the power of taxing themſelves, which, according to the original ideas of feudal government, was a right eſſential to every freeman.

The exerciſe of prerogative reſtrained by the privileges of the nobility;

Two things, however, remained, which moderated the exerciſe of the regal prerogative, and reſtrained it within ſuch bounds as preſerved the conſtitution of France from degenerating into mere deſpotiſm. The rights and privileges claimed by the nobility, muſt be conſidered as one barrier againſt the abſolute dominion of the crown. Though the nobles of France had loſt that political power which was veſted in their order as a body, they ſtill retained the perſonal rights and pre-eminence which they derived from their rank. They preſerved a conſciouſneſs of elevation above other claſſes of citizens; an exemption from burdens to which they were ſubject; a contempt of the occupations in which they were engaged; the privilege

privilege of aſſuming enſigns that indicated their dignity; a right to be treated with a certain degree of deference during peace; and a claim to various diſtinctions when in the field. Many of theſe pretenſions were not founded on the words of ſtatutes, or derived from poſitive laws; they were defined and aſcertained by the maxims of honour, a title more delicate, but no leſs ſacred. Theſe rights, eſtabliſhed and protected by a principle equally vigilant in guarding, and intrepid in defending them, are to the Sovereign himſelf objects of reſpect and veneration. Wherever they ſtand in its way, the royal prerogative is bounded. The violence of a Deſpot may exterminate ſuch an order of men; but as long as it ſubſiſts, and its ideas of perſonal diſtinction remain entire, the power of the Prince has limits [g]. SECT. III.

As in France, the body of nobility was very numerous, and the individuals of which it was compoſed retained an high ſenſe of their own pre-eminence, to this we may aſcribe, in a great meaſure, the mode of exerciſing the royal prerogative which peculiarly diſtinguiſhes the government of that kingdom. An intermediate order was placed between the Monarch and his other ſubjects, and in every act of authority it became neceſſary to attend to its privileges, and not only to guard againſt any real violation of theſe, but to avoid any ſuſpicion of its being poſſible that they might be violated.

[g] De l'Eſprit des Loix, liv. ii. c. 4. Dr. Ferguſon's Eſſay on the Hiſt. of Civil Society, part i. ſec. 10.

Thus

Sect. III. Thus a ſpecies of government was eſtabliſhed in France, unknown in the ancient world, that of a monarchy, in which the power of the ſovereign, though unconfined by any legal or conſtitutional reſtraint, has certain bounds ſet to it by the ideas which one claſs of his ſubjects entertain concerning their own dignity.

And by the juriſdiction of the parliaments, particularly that of Paris.

The juriſdiction of the Parliaments in France, particularly that of Paris, was the other barrier which ſerved to confine the exerciſe of the royal prerogative within certain limits. The parliament of Paris was originally the court of the Kings of France, to which they committed the ſupreme adminiſtration of juſtice within their own domains, as well as the power of deciding with reſpect to all caſes brought before it by appeals from the courts of the barons. When, in conſequence of events and regulations which have been mentioned formerly, the time and place of its meeting were fixed, when not only the form of its procedure, but the principles on which it decided, were rendered regular and conſiſtent, when every cauſe of importance was finally determined there, and when the people became accuſtomed to reſort thither as to the ſupreme temple of juſtice, the parliament of Paris roſe to high eſtimation in the kingdom, its members acquired dignity, and its decrees were ſubmitted to with deference. Nor was this the only ſource of the power and influence which the parliament obtained. The Kings of France, when they firſt began to aſſume the legiſlative power, in

order

order to reconcile the minds of their people to this new exertion of prerogative, produced their edicts and ordinances in the parliament of Paris, that they might be approved of and regiſtered there, before they were publiſhed and declared to be of authority in the kingdom. During the intervals between the meetings of the States General of the kingdom, or under thoſe reigns when the States General were not aſſembled, the Monarchs of France were accuſtomed to conſult the parliament of Paris with reſpect to the moſt arduous affairs of government, and frequently regulated their conduct by its advice, in declaring war, in concluding peace, and in other tranſactions of publick concern. Thus there was erected in the kingdom a tribunal which became the great depoſitory of the laws, and by the uniform tenor of its decrees, it eſtabliſhed principles of juſtice and forms of proceeding which were conſidered as ſo ſacred, that even the ſovereign power of the Monarch durſt not venture to diſregard or to violate them. The members of this illuſtrious body, though they neither poſſeſs legiſlative authority, nor can be conſidered as the repreſentatives of the people, have availed themſelves of the reputation and influence which they had acquired among their countrymen, in order to make a ſtand to the utmoſt of their ability againſt every unprecedented and exorbitant exertion of the prerogative. In every period of the French hiſtory, they have merited the praiſe of being the virtuous

SECT. III. tuous but feeble guardians of the rights and privileges of the nation [RR].

Conſtitution and government of the German Empire.

THE kingdom of France extends to the confines of the German Empire, from which Charles V. derived his title of higheſt dignity. In explaining the political conſtitution of this vaſt and complex body at the beginning of the ſixteenth century, I ſhall avoid entering into ſuch a detail as would involve my readers in that inextricable labyrinth, which it formed by the multiplicity of its tribunals, the number of its members, their interfering rights, and by the endleſs diſcuſſions or refinements of the publick lawyers of Germany with reſpect to all theſe.

Its ſtate under Charlemagne and his deſcendants.

THE Empire of Charlemagne was a ſtructure erected in ſo ſhort a time that it could not be permanent. Under his immediate ſucceſſor it began to totter; and it ſoon fell to pieces. The crown of Germany was ſeparated for ever from that of France, and the deſcendants of Charlemagne eſtabliſhed two great monarchies ſo ſituated as to give riſe to a perpetual rivalſhip and enmity between them. But the Princes of the race of Charlemagne who were placed on the Imperial throne, were not altogether ſo degenerate, as thoſe of the ſame family who reigned in France. In the hands of the former the royal authority retained ſome vigour, and the nobles of Germany, though poſ-

[RR] NOTE XL.

ſeſſed

ſeſſed of extenſive privileges as well as ample territories, did not ſo early attain independence. The great offices of the crown continued to be at the diſpoſal of the ſovereign, and during a long period, fiefs remained in their original ſtate, without becoming hereditary and perpetual in the families to which they had been granted.

Other families are raiſed to the Imperial dignity.

At length the German branch of the family of Charlemagne became extinct, and his feeble deſcendants who reigned in France had ſunk into ſuch contempt, that the Germans, without looking towards them, exerciſed the right inherent in a free people; and in a general aſſembly of the nation elected Conrad Count of Franconia Emperor. (A.D. 911.) After him Henry of Saxony, and his deſcendants the three Othos, were placed, in ſucceſſion, on the Imperial throne, by the ſuffrages of their countrymen. The extenſive territories of the Saxon Emperors, their eminent abilities and enterprizing genius, not only added new vigour to the Imperial dignity, but raiſed it to higher power and pre-eminence. Otho the Great marched at the head of a numerous army into Italy, and after the example of Charlemagne, gave law to that country. (A.D. 952.) Every power there recognized his authority. He created Popes and depoſed them by his ſovereign mandate. He annexed the kingdom of Italy to the German Empire. Elated with his ſucceſs, he aſſumed the title of Cæſar Auguſtus [h]. A Prince born in the heart of Germany pretended

[h] Annaliſta Saxo, &c. ap. Struv. Corp. vol. i. p. 246.

to

SECT. III. to be the successor of the Emperors of ancient Rome, and claimed a right to the same power and prerogative.

The German nobility acquire independent and sovereign authority.

BUT while the Emperors, by means of these new titles, and new dominions, gradually acquired additional authority and splendour, the nobility of Germany went on at the same time extending their privileges and jurisdiction. The situation of affairs was favourable to their attempts. The vigour which Charlemagne had given to government quickly relaxed. The inability of some of his successors was such, as would have encouraged vassals less enterprizing than the nobles of that age, to have claimed new rights and to have assumed new powers. The civil wars in which other Emperors were engaged, obliged them to pay perpetual court to their subjects on whose support they depended, and not only to connive at their usurpations, but to permit and even to authorize them. Fiefs gradually became hereditary. They were transmitted not only in the direct, but in the collateral line. The investiture of them was demanded not only by male but by female heirs. Every baron began to exercise sovereign jurisdiction within his own domains; and the Dukes and Counts of Germany took wide steps towards rendering their territories distinct and independent States[i]. The Saxon Emperors observed their progress, and were aware of its ten-

The German ecclesiasticks raised to the same power.

[i] Pfeffel. Abregè, p. 120, 152, Lib. Feudor, tit. 1.

dency.

dency. But as they could not hope to humble vaſſals already grown too potent, unleſs they had turned their whole force as well as attention to that enterprize, and as they were extremely intent on their expeditions into Italy, which they could not undertake without the concurrence of their nobles, they were ſolicitous not to alarm them by any direct attack on their privileges and juriſdictions. They aimed, however, at undermining their power, and inconſiderately beſtowed additional territories, and accumulated new honours on the clergy, in hopes that this order might ſerve as a counterpoiſe to that of the nobility in any future ſtruggle [k].

The fatal effects of aggrandizing the clergy. A. D. 1024.

The unhappy effects of this fatal error in policy were quickly felt. Under the Emperors of the Franconian and Swabian lines, whom the Germans by their voluntary election placed on the Imperial throne, a new face of things appeared, and a ſcene was exhibited in Germany, which aſtoniſhed all Chriſtendom at that time, and which in the preſent age appears almoſt incredible. The Popes, hitherto dependent on the Emperors, and indebted for their power as well as dignity to their beneficence and protection, began to claim a ſuperior juriſdiction; and in virtue of authority which they pretended to derive from heaven, tried, condemned, excommunicated and depoſed their former maſters. Nor is this to be conſidered

[k] Pfeffel. Abregè, p. 154.

SECT. III. merely as a frantick ſally of paſſion in a pontiff intoxicated with high ideas concerning the extent of prieſtly domination, and the plenitude of papal power. Gregory VII. was able as well as daring. His preſumption and violence were accompanied with political diſcernment and ſagacity. He had obſerved that the Princes and nobles of Germany, had acquired ſuch conſiderable territories and ſuch extenſive juriſdiction as rendered them not only formidable to the Emperors, but diſpoſed them to favour any attempt to circumſcribe their power. He foreſaw that the eccleſiaſticks of Germany, raiſed almoſt to a level with its Princes, were ready to ſupport any perſon who would ſtand forth as the protector of their privileges and independence. With both of theſe Gregory negociated, and had ſecured many devoted adherents among them, before he ventured to enter the liſts againſt the head of the Empire.

The conteſts between the Popes and Emperors, and the conſequences of theſe.

HE began his rupture with Henry IV. upon a pretext that was popular and plauſible. He complained of the venality and corruption with which the Emperor had granted the inveſtiture of benefices to eccleſiaſticks. He contended that this right belonged to him as head of the church; he required Henry to confine himſelf within the bounds of his civil juriſdiction, and to abſtain for the future from ſuch ſacrilegious encroachments on his ſpiritual dominion. All the cenſures of the church were denounced againſt Henry, becauſe he

he refused to relinquish those powers which his predecessors had uniformly exercised. The most considerable of the German Princes and ecclesiasticks were excited to take arms against him. His mother, his wife, his sons were wrought upon to disregard all the ties of blood as well as of duty, and to join the party of his enemies [k]. Such were the successful arts with which the court of Rome inflamed the superstitious zeal, and conducted the factious spirit of the Germans and Italians, that an Emperor, distinguished not only for many virtues, but possessed of considerable talents, was at length obliged to appear as a supplicant at the gate of the castle in which the Pope resided, and to stand there, three days, bare-footed, in the depth of winter, imploring a pardon, which at length he obtained with difficulty [SS]. A. D. 1077.

SECT. III.

THIS act of humiliation degraded the Imperial dignity. Nor was the depression only momentary. The contest between Gregory and Henry gave rise to the two great factions of the Guelfs and Ghibellines; the former of which supporting the pretensions of the Popes, and the latter defending the rights of the Emperor, kept Germany and Italy in perpetual agitation during three centuries. A regular system for humbling the Emperors and circumscribing their power was formed, and adhered to uniformly throughout that period. The Popes, the free States in Italy, the nobility and

The Imperial authority gradually declines.

[k] Annal. German. ap. Struv. i. p. 325.

[SS] NOTE XLI.

SECT. III. ecclesiasticks of Germany, were all interested in its success; and notwithstanding the return of some short intervals of vigour, under the administration of a few able Emperors, the Imperial
A. D. 1256. authority continued to decline. During the anarchy of the long interregnum subsequent to the death of William of Holland, it dwindled down
A. D. 1273. to nothing. Rodulph of Hapsburgh, the founder of the house of Austria, and who first opened the way to its future grandeur, was at length elected Emperor, not that he might re-establish and extend the Imperial authority, but because his territories and influence were so inconsiderable as to excite no jealousy in the German Princes, who were willing to preserve the forms of a constitution, the power and vigour of which they had destroyed. Several of his successors were placed on the Imperial throne from the same motive; and almost every remaining prerogative was wrested out of the hands of feeble Princes unable to exercise or to defend them.

A total change in the political constitution of the Empire.

DURING this period of turbulence and confusion the constitution of the Germanick body underwent a total change. The ancient names of courts and magistrates, together with the original forms and appearance of policy, were preserved; but such new privileges and jurisdiction were assumed, and so many various rights established, that the same species of government no longer subsisted. The Princes, the great nobility, the dignified ecclesiasticks, the free cities had taken advantage of

the interregnum, which I have mentioned, to establish or to extend their usurpations. They claimed and exercised the right of governing their respective territories with full sovereignty. They acknowledged no superior with respect to any point, relative to the interior administration and police of their domains. They enacted laws, imposed taxes, coined money, declared war, concluded peace, and exerted every prerogative peculiar to independent States. The ideas of order and political union which had formed the various provinces of Germany into one body were entirely lost; and the society must have dissolved, if the forms of feudal subordination had not preserved such an appearance of connection or dependence among the various members of the community, as preserved it from falling to pieces.

Expedients for putting an end to this state of anarchy.

THIS bond of union, however, was extremely feeble; and no principle remained in the German constitution of sufficient force to maintain publick order, and hardly to ascertain personal security. From the accession of Rodulph of Hapsburgh, to the reign of Maximilian, the immediate predecessor of Charles V. the Empire felt every calamity which a state must endure when the authority of government is so much relaxed as to have lost all vigour. The causes of dissension among that vast number of members which composed the Germanick body, were infinite and unavoidable. These gave rise to perpetual private wars, carried on with all the violence of resentment when unrestrained

SECT. III. reſtrained by ſuperior authority. Rapine, outrage, exactions, became univerſal. Commerce was interrupted; induſtry ſuſpended; and every part of Germany reſembled a country which an enemy had plundered and laid deſolate[l]. The variety of expedients employed with a view to reſtore order and tranquillity, prove that the grievances occaſioned by this ſtate of anarchy had grown intolerable. Arbiters were appointed to terminate the differences among the ſeveral ſtates. The cities united in a league, the object of which was to check the rapine and extortions of the nobility. The nobility formed confederacies, on pupoſe to maintain tranquillity among their own order. Germany was divided into ſeveral Circles, in each of which a provincial and partial juriſdiction was eſtabliſhed, to ſupply the place of a publick and common tribunal[m].

Particularly by the inſtitution of the Imperial Chamber.

BUT all theſe remedies were ſo fruitleſs, that they ſerved only to demonſtrate the violence of that anarchy which prevailed, and the inefficacy of the means employed to correct it. At length Maximilian re-eſtabliſhed publick order in the Empire, by inſtituting the Imperial chamber, a tribunal compoſed of judges named partly by the A. D. 1495. Emperor, partly by the ſeveral States, and veſted with authority to decide finally concerning all differences among the members of the Germanick body.

[l] See above, page 53 and note xxi. Datt. de pace publica Imper. p. 25, no. 53. p. 28, no. 26. p. 35, no. 11.

[m] Datt. paſſim. Struv. Corp. Hiſt. i. 510, &c.

body. A few years after, by giving a new form to the Aulick council, which takes cognizance of all feudal cauſes, and ſuch as belong to the Emperor's immediate juriſdiction, he reſtored ſome degree of vigour to the Imperial authority. Sect. III. A. D. 1512.

But notwithſtanding the ſalutary effects of theſe regulations and improvements, the political conſtitution of the German Empire, at the commencement of the period of which I propoſe to write the hiſtory, was of a ſpecies ſo peculiar, as not to reſemble perfectly any form of government known either in the ancient or modern world. It was a complex body, formed by the aſſociation of ſeveral States, each of which poſſeſſed ſovereign and independent juriſdiction within its own territories. Of all the members which compoſed this united body, the Emperor was the head. In his name, all decrees and regulations with reſpect to points of common concern, were iſſued; and to him the power of carrying them into execution was committed. But this appearance of monarchical power in the Emperor was more than counterbalanced by the influence of the Princes and States of the Empire in every act of adminiſtration. No law extending to the whole body could paſs, no reſolution that affected the general intereſt could be taken, without the approbation of the Diet of the Empire. In this aſſembly, every ſovereign Prince and State of the Germanick body had a right to be preſent, to deliberate, and to vote. The decrees

At the beginning of the ſixteenth century, the Empire an aſſociation of ſovereign ſtates.

SECT. III. or *Recesses* of the Diet were the laws of the Empire, which the Emperor was bound to ratify and enforce.

Peculiarities in the nature of this association.

UNDER this aspect the constitution of the Empire appears a regular confederacy, similar to the Achæan league in ancient Greece, or to that of the United Provinces and of the Swiss Cantons in modern times. But if viewed in another light, striking peculiarities in its political state present themselves. The Germanick body was not formed by the union of members altogether distinct and independent. All the Princes and States joined in this association, were originally subject to the Emperors, and acknowledged them as sovereigns. Besides this, they originally held their lands as Imperial fiefs, and in consequence of this tenure owed the Emperors all those services which feudal vassals are bound to perform to their liege lord. But though this political subjection was entirely at an end, and the influence of the feudal relation much diminished, the ancient forms and institutions introduced when the Emperors governed Germany with authority, not inferior to that which the other monarchs of Europe possessed, still remained. Thus an opposition was established between the genius of the government, and the forms of administration in the German Empire. The former considered the Emperor only as the head of a confederacy, the members of which, by their voluntary choice, have raised him to that dignity; the latter seemed to imply, that he is

really

really invested with sovereign power. By this circumstance, such principles of hostility and discord were interwoven in the frame of the Germanick body, as affected each of its members, rendering their interior union incomplete, and their external efforts feeble and irregular. The effects of this vice or disorder inherent in the constitution of the Empire are so considerable, that, without attending to them, it is impossible to comprehend many transactions in the reign of Charles V. or to form just ideas concerning the genius of the German government.

Sect. III.

The defects in the constitution of the Empire.

THE Emperors of Germany, at the beginning of the sixteenth century, were distinguished by the most pompous titles, and by such ensigns of dignity as intimated their authority to be superior to that of all other monarchs. The greatest Princes of the Empire attended and served them on some occasions, as the officers of their houshold. They exercised prerogatives which no other sovereign ever claimed. They retained pretensions to all the extensive powers which their predecessors had enjoyed in any former age. But at the same time, instead of possessing that ample domain which had belonged to the ancient Emperors of Germany, and which stretched from Basil to Cologne, along both banks of the Rhine [n], they were stript of all territorial property, and had not a single city, a single castle, a single foot of land, that pertained to them as heads of the Empire. As their domain

Arising from the limited power of the Emperors.

[n] Pfeffel. Abregè, &c. p. 241.

was

Sect. III. was alienated, their ſtated revenues were reduced almoſt to nothing; and the extraordinary aids which on a few occaſions they obtained, were granted ſparingly, and paid with reluctance. The Princes and States of the Empire, though they ſeemed to recognize the Imperial authority, were ſubjects only in name, each of them poſſeſſing a compleat municipal juriſdiction within the precincts of his own territories.

From the nature of their titles and pretenſions.

From this ill-compacted frame of government, effects that were unavoidable reſulted. The Emperors, dazzled with the ſplendour of their titles, and the exterior ſigns of vaſt authority, were apt to imagine themſelves to be the real ſovereigns of Germany, and were led to aim continually at recovering the exerciſe of thoſe powers and prerogatives which the forms of the conſtitution ſeemed to veſt in them, and which their predeceſſors, Charlemagne and the Othos, had actually enjoyed. The Princes and States, aware of the nature as well as extent of their pretenſions, were perpetually on their guard, in order to watch all the motions of the Imperial court, and to circumſcribe its power within limits ſtill more narrow. The Emperors, in ſupport of their claims, appealed to ancient forms and inſtitutions, which the States held to be obſolete. The States founded their rights on recent practice and modern privileges, which the Emperors conſidered as uſurpations.

This

Sect. III.

From the manner in which they were elected.

This jealousy of the Imperial authority, together with the opposition between it and the rights of the States, increased considerably from the time that the Emperors were elected, not by the collective body of German nobles, but by a few Princes of chief dignity. During a long period, all the members of the Germanick body assembled, and made choice of the person whom they appointed to be their head. But amidst the violence and anarchy which prevailed for several centuries in the Empire, seven Princes who possessed the most extensive territories, and who had obtained a hereditary title to the great offices of the State, acquired the exclusive privilege of nominating the Emperor. This right was confirmed to them by the Golden Bull; the mode of exercising it was ascertained, and they were dignified with the appellation of *Electors*. The nobility and free-cities being thus stripped of a privilege which they had once enjoyed, were less connected with a Prince, towards whose elevation they had not contributed by their suffrages, and came to be more apprehensive of his authority. The Electors, by their extensive power, and the distinguishing privileges which they possessed, became formidable to the Emperors, with whom they were placed almost on a level in several acts of jurisdiction. Thus the introduction of the Electoral college into the Empire, and the authority which it acquired, instead of diminishing, contributed to strengthen the principles of hostility and discord in the Germanick constitution.

These

SECT. III.

From the different forms of government eſtabliſhed in the States which compoſed the Germanick body.

THESE were further augmented by the various and repugnant forms of civil policy in the ſeveral States which compoſed the Germanick body. It is no eaſy matter to render the union of independent States perfect and entire, even when the genius and forms of their reſpective governments happen to be altogether ſimilar. But in the German Empire, which was a confederacy of Princes, of Eccleſiaſticks, and of free-cities, it was impoſſible that they could incorporate thoroughly. The free-cities were ſmall republicks, in which the maxims and ſpirit peculiar to that ſpecies of government prevailed. The Princes and nobles, to whom ſupreme juriſdiction belonged, poſſeſſed a ſort of monarchical power within their own territories, and the forms of their interior adminiſtration nearly reſembled thoſe of the great feudal kingdoms. The intereſts, the ideas, the objects of States ſo differently conſtituted, cannot be the ſame. Nor could their common deliberations be carried on with the ſame ſpirit, while the love of liberty and attention to commerce were the reigning principles in the cities; while the deſire of power, and ardour for military glory, were the governing paſſions of the Princes and nobility.

From the oppoſition between the ſecular and eccleſiaſtical members.

THE ſecular and eccleſiaſtical members of the Empire were as little fitted for union as the free-cities and the nobility. Vaſt territories were annexed to ſeveral of the German biſhopricks and abbeys, and the dignified eccleſiaſticks held ſome of the higheſt

highest offices in the Empire by hereditary right. The younger sons of noblemen of the second order, who had devoted themselves to the church, were commonly promoted to these stations of eminence and power; and it was no small mortification to the Princes and great nobility, to see persons raised from an inferior rank to the same level with themselves, or even exalted to superior dignity. The education of these churchmen, the genius of their profession, and their connection with the court of Rome, rendered their character as well as interest different from those of the other members of the Germanick body, with whom they were called to act in concert. Thus another source of jealousy and variance was opened, which ought not to be overlooked when we are searching into the nature of the German constitution.

From the unequal distribution of wealth and power among the members.

To all these causes of dissention may be added one more, arising from the unequal distribution of power and wealth among the States of the Empire. The Electors, and other nobles of the highest rank, not only possessed sovereign jurisdiction, but governed such extensive, populous, and rich countries, as rendered them great Princes. Many of the other members, though they enjoyed all the rights of sovereignty, ruled over such petty domains, that their real power bore no proportion to this high prerogative. A well-compacted and vigorous confederacy could not be formed of such dissimilar states. The weaker were jealous, timid, and unable either to assert or to defend their just privileges.

SECT. III. privileges. The more powerful were apt to assume and to become oppressive. The Electors and Emperors endeavoured by turns to extend their own authority, by encroaching on the rights of these feeble members of the Germanick body; and they, over-awed or corrupted, tamely gave up their privileges, or meanly favoured the designs formed against them [TT].

All these render the Germanick body incapable of acting with union and vigour.

AFTER contemplating all these principles of disunion and opposition in the constitution of the German Empire, it will be easy to account for the want of concord and uniformity, conspicuous in its councils and proceedings. That slow, dilatory, distrustful and irresolute spirit, which characterizes all its deliberations, will appear natural in a body, the junction of whose members was so incompleat, the different parts of which were held together by such feeble ties, and set at variance by such powerful motives. But the Empire of Germany, nevertheless, comprehended countries of such vast extent, and was inhabited by such a martial and hardy race of men, that when the abilities of an Emperor, or zeal for any common cause, could rouze this unwieldly body to put forth its strength, it acted with irresistible force. In the following history we shall find, that as the measures on which Charles V. was most intent, were often thwarted or rendered abortive by the spirit of jealousy and and division peculiar to the Germanick constitu-

[TT] NOTE XLII.

tion;

tion; so it was by the influence which he acquired over the Princes of the Empire, and by engaging them to co-operate with him, that he was enabled to make some of the greatest efforts which distinguish his reign. Sect. III.

The Turkish history is so blended, during the reign of Charles V. with that of the great nations in Europe, and the Ottoman Porte interposed so often, and with such decisive influence in the wars and negociations of the Christian Princes, that some previous account of the state of government in that great Empire, is no less necessary for the information of my readers, than these views of the constitution of other kingdoms which I have already exhibited to them. View of the Turkish government.

It has been the fate of the more southern and fertile parts of Asia, at different periods, to be conquered by that warlike and hardy race of men, who inhabit the vast country known to the ancients by the name of Scythia, and among the moderns by that of Tartary. One tribe of these people, called Turks or Turcomans, extended its conquests, under various leaders, and during several centuries, from the shore of the Caspian to the Streights of the Dardanelles. Towards the middle of the fifteenth century, these formidable conquerors took Constantinople by storm, and established the seat of their government in that Imperial city. Greece, Moldavia, Walachia, and the other provinces of the ancient kingdoms of Thrace and Macedonia, together Its origin.

SECT. III. gether with part of Hungary, were ſubjected to their power.

Its deſpotic genius.

BUT though the ſeat of the Turkiſh government was fixed in Europe, and the Sultans obtained poſſeſſion of ſuch extenſive dominions in that quarter of the globe, the genius of their policy was purely Aſiatick; and may be properly termed a deſpotiſm, in contradiſtinction to theſe monarchical and republican forms of government which we have been hitherto contemplating. The ſupreme power was veſted in Sultans of the Ottoman race, that blood being deemed ſo ſacred, that no other was thought worthy of the throne. From this elevation, theſe ſovereigns could look down, and behold all their ſubjects reduced to the ſame level before them. The maxims of Turkiſh policy admit not any of thoſe inſtitutions, which, in other countries, limit the exerciſe, or moderate the rigour of monarchical power: no great court with conſtitutional and permanent juriſdiction to interpoſe both in the enactment and execution of laws: no body of hereditary nobles, whoſe ſenſe of their own pre-eminence, whoſe conſciouſneſs of what is due to their rank and character, whoſe jealouſy of their privileges circumſcribe the authority of the Prince, and ſerve not only as a barrier againſt the exceſſes of his caprice, but ſtand as an intermediate order between him and the people. Under the Turkiſh government, the political condition of every ſubject is equal. To be employed in the ſervice of the Sultan, is the only circumſtance that confers diſtinction.

tion. Even this diftinction is annexed fo clofely to the ftations in which perfons ferve, that it is fcarcely communicated to thofe who are placed in them. The higheft dignity in the Empire does not give any rank or pre-eminence to the family of him who enjoys it. As every man, before he is raifed to any ftation of authority, muft go through the preparatory difcipline of a long and fervile obedience [o], the moment he is deprived of power, he and his pofterity return to the fame condition with other fubjects, and fink back into obfcurity. It is the diftinguifhing and odious characteriftick of the Eaftern defpotifm, that it annihilates all other ranks of men, in order to exalt the monarch; that it leaves nothing to the former, while it gives every every thing to the latter; that it endeavours to fix in the minds of thofe who are fubject to it, the idea of no relation between men, but that of a mafter and of a flave, the former deftined to command and to punifh, the latter formed to tremble and to obey [UU]. Sect. III.

But as there are circumftances which frequently obftruct or defeat the falutary effects of the beft-regulated governments, there are others which contribute to mitigate the evils of the moft vicious forms of policy. There can, indeed, be no conftitutional reftraints upon the will of a Prince in a defpotic government; but there may be fuch as Power of the Sultan limited by religion;

o State of the Turkifh Empire by Rycaut, p. 25.

[UU] NOTE XLIII.

SECT. III. are accidental. Absolute as the Turkish Sultans are, they feel themselves circumscribed both by religion, the principle on which their authority is founded [p], and by the army, the instrument which they must employ in order to maintain it. Wherever religion interposes, the will of the Sovereign must submit to its decrees. When the Koran hath prescribed any religious rite; hath enjoined any moral duty; or hath confirmed, by its sanction, any political maxim, the command of the Sultan cannot overturn that which an higher authority hath established. The chief restriction, however, on the will of the Sultans, is imposed by the military power. An armed force must surround the throne of every Despot, to maintain his authority, and to execute his commands. As the Turks extended their empire over nations, which they did not exterminate, but reduce to subjection, they found it necessary to render their military establishment numerous and formidable. Amurath, their third Sultan, in order to form a body of devoted troops, that might serve as the immediate guards of his person and dignity, appointed his officers to seize annually, as the Imperial property, the fifth part of the youth taken in war. These, after being instructed in the Mahometan religion, inured to obedience by severe discipline, and trained to warlike exercises, were formed into a body distinguished by the name of *Janizaries*, or new soldiers. Every sentiment which enthusiasm can inspire, every mark of distinction that the favour of the Prince

and by the military.

Origin of the Janizaries. A. D. 1362.

[p] Rycaut, p. 8.

could

Sect. III.

could confer, were employed in order to animate this body with martial ardour, and with a consciousness of its own pre-eminence [q]. The Janizaries soon became the chief strength and pride of the Ottoman armies; and by their number as well as reputation, were distinguished above all the troops, whose duty it was to attend on the person of the Sultans [XX].

Their vast influence in the Turkish government.

Thus, as the supreme power in every society is possessed by those who have arms in their hands, this formidable body of soldiers, destined to be the instruments of enlarging the Sultan's authority, acquired, at the same time, the means of controuling it. The Janizaries in Constantinople, like the Prætorian bands in ancient Rome, quickly perceived all the advantages which they derived from being stationed in the capital; from their union under one standard; and from being masters of the person of the Prince. The Sultans became no less sensible of their influence and importance. The *Capiculy*, or soldiery of the Port, was the only power in the Empire that a Sultan or his Visier had reason to dread. To preserve the fidelity and attachment of the Janizaries, was the great art of government, and the principal object of attention in the policy of the Ottoman court. Under a monarch, whose abilities and vigour of mind fit him for command, they are obsequious instruments; execute whatever he enjoins; and render his power

[q] Prince Cantemir's History of the Othman Empire, p. 87.

[XX] NOTE XLIV.

Sect. III. irresistible. Under feeble Princes, or such as are unfortunate, they become turbulent and mutinous; assume the tone of masters; degrade and exalt Sultans at pleasure; and teach those to tremble, on whose nod, at other times, life or death depend.

Progress of the Turks towards dominion.

From Mahomet II. who took Constantinople, to Solyman, who began his reign a few months after Charles V. was placed on the Imperial throne of Germany, a succession of illustrious Princes ruled over the Turkish Empire. By their great abilities, they kept their subjects of every order, military as well as civil, submissive to government; and had the absolute command of whatever force their vast Empire was able to exert. Solyman, in particular, who is known to the Christians chiefly as a conqueror, but is celebrated in the Turkish annals as the great law giver who established order and police in their Empire, governed during his long reign with no less authority that wisdom. He divided his dominions into several districts; he appointed the number of soldiers which each should furnish; he appropriated a certain proportion of the lands in every province for their maintenance; he regulated, with a minute accuracy, every thing relative to their discipline, their arms, and the nature of their service. He put the finances of the Empire into an orderly train of administration; and though the taxes in the Turkish dominions, as well as in the other despotic monarchies of the East, are far from being considerable, he supplied that defect by an attentive and severe œconomy.

Nor

Sect. III.

Advantages which they possessed over the Christian powers in the sixteenth century.

Nor was it only under such Sultans as Solyman, whose talents were no less adapted to preserve interior order than to conduct the operations of war, that the Turkish Empire engaged with advantage in its contests with the Christian states. The long succession of able Princes, which I have mentioned, had given such vigour and firmness to the Ottoman government, that it seems to have attained, during the sixteenth century, the highest degree of perfection of which its constitution was capable. Whereas the great monarchies in Christendom were still far from that state, which could enable them to act with a full exertion of their force. Besides this, the Turkish troops in that age possessed every advantage which arises from superiority in military discipline. At the time when Solyman began his reign, the Janizaries had been embodied near a century and a half, and during that long period, the severity of their military discipline had in no degree relaxed. The soldiers drawn from the provinces of the Empire, had been kept almost continually under arms, in the various wars which the Sultans had carried on with hardly any interval of peace. Against troops thus trained and accustomed to service, the forces of the Christian powers took the field with great disadvantage. The most intelligent as well as impartial authors of the sixteenth century, acknowledge and lament the superior attainments of the Turks in the military art [YY]. The success which uniformly attended their arms in all their

[YY] NOTE XLV.

Sect. III. wars, demonſtrates the juſtneſs of this obſervation. The Chriſtian armies did not acquire that ſuperiority over the Turks, which they now poſſeſs, until the long eſtabliſhment of ſtanding forces had improved military diſcipline among the former; and until various cauſes and events, which it is not my province to explain, had corrupted or aboliſhed their ancient warlike inſtitutions among the latter.

PROOFS

AND

ILLUSTRATIONS.

PROOFS

AND

ILLUSTRATIONS.

NOTE I. Sect. I. p. 3. [A].

THE conſternation of the Britons, when invaded by the Picts and Caledonians after the Roman legions were called out of the iſland, may give ſome idea of the degree of debaſement to which the human mind was reduced by long ſervitude under the Romans. In their ſupplicatory letter to Aetius, which they call the *groans of Britain*, "We know not (ſay they) which way to turn us. The barbarians drive us to the ſea; and the ſea forces us back on the barbarians; between which we have only the choice of two deaths, either to be ſwallowed up by the waves, or to be butchered by the ſword." Hiſtor. Gildæ. ap. Gale. Hiſt. Britan. Script. p. 6.—— One can ſcarce believe this daſtardly race to be the deſcendants of that gallant people, who repulſed Cæſar, and defended their liberty ſo long againſt the Roman arms.

NOTE

NOTE II. Sect. I. p. 4. [B].

The barbarous nations were not only illiterate, but regarded literature with contempt. They found the inhabitants of all the provinces of the Empire ſunk in effeminacy, and averſe to war. Such a character was the object of ſcorn to an high-ſpirited and gallant race of men. "When we would brand an enemy," ſays Liutprandus, "with the moſt diſgraceful and contumelious appellation, we call him a Roman; hoc ſolo, id eſt *Romani* nomine, quicquid ignobilitatis, quicquid timiditatis, quicquid avaritiæ, quicquid luxuriæ, quicquid mendacii, immo quicquid vitiorum eſt comprehendentes." Liutprandi Legatio apud Murat. Scriptor. Italic. vol. ii. pars 1. p. 481. This degeneracy of manners, illiterate barbarians imputed to their love of learning. Even after they ſettled in the countries which they had conquered, they would not permit their children to be inſtructed in any ſcience; "for, (ſaid they) inſtruction in the ſciences tends to corrupt, enervate, and depreſs the mind; and he who has been accuſtomed to tremble under the rod of a pedagogue, will never look on a ſword or ſpear with an undaunted eye." Procop. de bello Gothor. lib. i. p. 4. ap. Scrip. Byz. edit. Venet. vol. i. A conſiderable number of years elapſed, before nations ſo rude, and ſo unwilling to learn, could produce hiſtorians capable of recording their tranſactions, or of deſcribing their manners and inſtitutions. By that time, all memory of their ancient con-

 dition

dition was loſt, and no monument remained to guide their firſt writers to any certain knowledge of it. If one expects to receive any ſatisfactory account of the manners and laws of the Goths, Lombards, or Franks, during their reſidence in thoſe countries where they were originally ſeated, from Jornandes, Paulus Warnefridus, or Gregory of Tours, the earlieſt and moſt authentick hiſtorians of theſe people, he will be miſerably diſappointed. Whatever imperfect knowledge has been conveyed to us of their ancient ſtate, we owe not to their own writers, but to the Greek and Roman hiſtorians.

NOTE III. Sect. I. p. 6. [C].

A circumstance related by Priſcus in his hiſtory of the embaſſy to Attila, King of the Huns, gives a ſtriking view of the enthuſiaſtick paſſion for war, which prevailed among the barbarous nations. When the entertainment to which that fierce conqueror admitted the Roman ambaſſadors was ended, two Scythians advanced towards Attila, and recited a poem in which they celebrated his victories, and military virtues. All the Huns fixed their eyes with attention on the bards. Some ſeemed to be delighted with the verſes; others, remembering their own battles and exploits, exulted with joy; while thoſe who were become feeble through age, burſt out into tears, bewailing the decay of their vigour, and the ſtate of inactivity in which they were now obliged to

remain.

remain. Excerpta ex historia Prisci Rhetoris ap. Byzant. Histor. Script. vol. i. p. 45.

NOTE IV. Sect. I. p. 12. [D].

A remarkable confirmation of both parts of this reasoning occurs in the history of England. The Saxons carried on the conquest of that country with the same destructive spirit, which distinguished the other barbarous nations. The ancient inhabitants of Britain were either exterminated; or forced to take shelter among the mountains of Wales; or reduced into servitude. The Saxon government, laws, manners and language were of consequence introduced into Britain; and were so perfectly established, that all memory of the institutions previous to their conquest was abolished. The very reverse of this happened in a subsequent revolution. A single victory placed William the Norman on the throne of England. The Saxon inhabitants, though oppressed, were not exterminated. William employed the utmost efforts of his power and policy to make his new subjects conform in every thing to the Norman standard; but without success. The Saxons, though vanquished, were far more numerous than their conquerors; when they began to incorporate, their laws and manners gradually gained ground. The Norman institutions were unpopular and odious; many of them fell into disuse; and in the English constitution and language, at this day, many essential parts are manifestly of Saxon, not of Norman extract.

NOTE

NOTE V. SECT. I. p. 13. [E].

PROCOPIUS, the hiſtorian, declines, from a principle of benevolence, to give any particular detail of the cruelties of the Goths; "Leſt, ſays he, I ſhould tranſmit a monument and example of inhumanity to ſucceeding ages." Proc. de bello Goth. lib. iii. cap. 10. ap. Byz. Script. vol. i. 126. But as the change, which I have pointed out as a conſequence of the ſettlement of the barbarous nations in the countries formerly ſubject to the Roman Empire, could not have taken place, if the greater part of the ancient inhabitants had not been extirpated, an event of ſuch importance and influence merits a more particular illuſtration. This will juſtify me for exhibiting ſome part of that melancholy ſpectacle, over which humanity prompted Procopius to draw a veil. I ſhall not, however, diſguſt my readers by a long detail; but reſt ſatisfied with collecting ſome inſtances of the devaſtations made by two of the many nations, which ſettled in the Empire. The Vandals were the firſt of the barbarians who invaded Spain. It was one of the richeſt and moſt populous of the Roman Provinces; the inhabitants had been diſtinguiſhed for courage, and had defended their liberty againſt the arms of Rome, with greater obſtinacy, and during a longer courſe of years, than any nation in Europe. But ſo entirely were they enervated by their ſubjection to the Romans, that the Vandals who entered the kingdom A. D. 409. compleated the conqueſt of it with ſuch rapidity,

that in the year 411, these barbarians divided it among them by casting lots. The desolation occasioned by their invasion is thus described by Idatius an eye-witness. "The barbarians wasted every thing with hostile cruelty. The pestilence was no less destructive. A dreadful famine raged, to such a degree, that the living were constrained to feed on the dead bodies of their fellow-citizens; and all these terrible plagues desolated at once the unhappy kingdoms." Idatii Chron. ap. Biblioth. Patrum. vol. vii. p. 1233. edit. Lugd. 1677. The Goths having attacked the Vandals in their new settlements, a fierce war ensued; the country was plundered by both parties; the cities which escaped at first, were laid in ashes, and the inhabitants exposed to suffer every thing that the wanton cruelty of barbarians could inflict. Idatius describes these, ibid. p. 1235. b. 1236. c. f. A similar account of their devastations is given by Isidorus Hispalensis, and the contemporary writers. Isid. Chron. ap. Grot. hist. Goth. 732. From Spain the Vandals passed over to Africa, A. D. 428. Africa was, next to Egypt, the most fertile of the Roman provinces. It was one of the granaries of the Empire, and is called by an ancient writer, the soul of the commonwealth. Though the army with which the Vandals invaded it, did not exceed 30,000 fighting men, they became absolute masters of the province in less than two years. A contemporary author gives a dreadful account of the havock which they made: "They found a province well cultivated, and enjoying plenty, the beauty

beauty of the whole earth. They carried their destructive arms into every corner of it; they dispeopled it by their devastations; exterminating every thing with fire and sword. They did not even spare the vines, and fruit trees, that those, to whom caves and inaccessible mountains had afforded a retreat, might find no nourishment of any kind. Their hostile rage could not be satiated, and there was no place exempted from the effects of it. They tortured their prisoners with the most exquisite cruelty, that they might force from them a discovery of their hidden treasures. The more they discovered, the more they expected, and the more implacable they became. Neither the infirmities of age nor of sex; neither the dignity of nobility, nor the sanctity of the sacerdotal office, could mitigate their fury; but the more illustrious their prisoners were, the more barbarously they insulted them. The publick buildings which resisted the violence of the flames, they levelled with the ground. They left many cities without an inhabitant. When they approached any fortified place, which their undisciplined army could not reduce, they gathered together a multitude of prisoners, and putting them to the sword, left their bodies unburied, that the stench of the carcasses might oblige the garrison to abandon it." Victor Vitensis de persecutione Africana. ap. Bibl. Patrum. vol. viii. p. 666. St. Augustin an African, and a contemporary author, gives a similar description of their cruelties, opera v. x. p. 372. edit. 1616.—About an hundred

years,

years after the ſettlement of the Vandals in Affica, Beliſarius attacked and diſpoſſeſſed them. Procopius, a contemporary hiſtorian, deſcribes the devaſtation which that war occaſioned. "Africa, ſays he, was ſo entirely diſpeopled, that one might travel ſeveral days in it without meeting one man; and it is no exaggeration to ſay, that in the courſe of the war five millions of perſons periſhed." Proc. hiſt. Arcana cap. 18. ap. Byz. Script. vol. i. 315.——I have dwelt longer upon the calamities of this province, becauſe they are deſcribed not only by contemporary authors, but by eye-witneſſes. The preſent ſtate of Africa confirms their teſtimony. Many of the moſt flouriſhing and populous cities with which it was filled, were ſo entirely ruined, that no veſtiges remain to point out where they were ſituated. That fertile territory which ſuſtained the Roman Empire lies in a great meaſure uncultivated; and that province, which Victor in his barbarous Latin called *Specioſitas totius terræ florentis*, is now the retreat of pirates and banditti.

While the Vandals laid waſte one part of the Empire, the Huns deſolated the reſt of it. Of all the barbarous tribes they were the fierceſt and moſt formidable. Ammianus Marcellinus, a contemporary author, and one of the beſt of the later hiſtorians, gives an account of their policy and manners. They nearly reſemble thoſe of the Scythians deſcribed by the ancients, and of the Tartars

known

known to the moderns. In ſome parts of their character, and in ſeveral of their cuſtoms, they reſemble the ſavages in North America. Their paſſion for war and action was extreme. "As in poliſhed ſocieties (ſays Ammianus) eaſe and tranquillity are courted, they delight in war and dangers. He who falls in battle is reckoned happy. They who die of old age or of diſeaſe are deemed infamous. They boaſt, with the utmoſt exultation, of the number of enemies whom they have ſlain, and as the moſt glorious of all ornaments, they faſten the ſcalps of thoſe who have fallen by their hand to the trappings of their horſes." Ammian. Marc. lib. xxxi. p. 477. edit. Gronov. Ludg. 1693.——Their incurſions into the Empire began in the fourth century; and the Romans, though no ſtrangers, by that time, to the effects of barbarous rage, were aſtoniſhed at the cruelty of their devaſtations. Thrace, Pannonia, and Illyricum were the countries which they firſt laid deſolate. As they had no thoughts of ſettling in Europe, their inroads were frequent, and Procopius computes that in each of theſe, at a medium, two hundred thouſand perſons periſhed or were carried off as ſlaves. Procop. hiſt. Arcan. ap. Byz. ſcript. vol. i. 316. Thrace, the beſt cultivated province in that quarter of the Empire, was converted into a deſert, and when Priſcus accompanied the ambaſſadors ſent to Attila, there were no inhabitants in ſome of the cities, but a few miſerable people who had taken ſhelter among the ruins

ruins of the churches; and the fields were covered with the bones of thoſe who had fallen by the ſword. Priſcus ap. Byz. Script. vol. i. 34. Attila became King of the Huns. A. D. 434. He is one of the greateſt and moſt enterprizing conquerors mentioned in hiſtory. He extended his Empire over all the vaſt countries, comprehended under the general names of Scythia and Germany in the ancient diviſion of the world. While he was carrying on his wars againſt the barbarous nations, he kept the Roman Empire under perpetual apprehenſions, and extorted vaſt ſubſidies from the timid and effeminate monarchs who governed it. In the year 451, he entered Gaul, at the head of an army compoſed of all the various nations which he had ſubdued. It was more numerous than any with which the barbarians had hitherto invaded the Empire. The devaſtations which he committed were horrible; not only the open country, but the moſt flouriſhing cities were deſolated. The extent and cruelty of his devaſtations are deſcribed by Salvianus de Gubernat. Dei. edit. Baluz. Par. 1669. p. 139, &c. and by Idatius ubi ſupra p. 1235. Aetius put a ſtop to his progreſs in that country by the famous battle of Chalons, in which (if we may believe the hiſtorians of that age) three hundred thouſand perſons periſhed. Idat. ibid. Jornandes de rebus Geticis ap. Grot. hiſt. Gothor. p. 671. Amſt. 1665. But next year he reſolved to attack the center of the Empire, and marching into Italy, waſted it with

rage,

rage, inflamed by the ſenſe of his late diſgrace. What Italy ſuffered by the Huns exceeded all the calamities which the preceding incurſions of the barbarians had brought upon it. Conringius has collected ſeveral paſſages from the ancient hiſtorians, which prove that the devaſtations committed by the Vandals and Huns in the countries ſituated on the banks of the Rhine, were no leſs cruel and fatal to the human race. Exercitatio de urbibus Germaniæ. Opera, vol. i. 489. But it is endleſs, it is ſhocking to follow theſe deſtroyers of mankind through ſo many ſcenes of horror, and to contemplate the havock which they made of the human ſpecies.

But the ſtate in which Italy appears to have been, during ſeveral ages, after the barbarous nations ſettled in it, is the moſt deciſive proof of the cruelty as well as extent of their devaſtations. Whenever any country is thinly inhabited, trees and ſhrubs ſpring up in the uncultivated fields, and ſpreading by degrees form large foreſts; by the overflowing of rivers, and the ſtagnating of waters, other parts of it are converted into lakes and marſhes. Ancient Italy, the ſeat of the Roman elegance and luxury, was cultivated to the higheſt pitch. But ſo effectually did the devaſtations of the barbarians deſtroy all the effects of their induſtry and cultivation, that in the eighth century Italy appears to have been covered with foreſts and marſhes of vaſt extent. Muratori enters into a long detail concerning the ſituation

and limits of theſe; and proves by the moſt authentick evidence, that great tracts of territory, in all the different provinces of Italy, were either over-run with wood, or laid under water. Nor did theſe occupy parts of the country naturally barren or of little value, but were ſpread over diſtricts, which ancient writers repreſent as extremely fertile, and which at preſent are highly cultivated. Muratori antiquitates Italicæ medii ævi, diſſert. xxi. v. ii. p. 149, 153, &c. A ſtrong proof of this occurs in a deſcription of the city of Modena, by an author of the tenth century. Murat. ſcript. Rerum Italic. vol. ii. pars ii. p. 691. The ſtate of deſolation in other countries of Europe ſeems to have been the ſame. In many of the moſt early charters now extant, the lands granted to monaſteries or to private perſons, are diſtinguiſhed into ſuch as are cultivated or inhabited, and ſuch as were *eremi*, deſolate. In many inſtances, lands are granted to perſons becauſe they had taken them from the deſert, *ab eremo*, and had cultivated and planted them with inhabitants. This appears from a charter of Charlemagne, publiſhed by Eckhart de rebus Franciæ Orientalis, vol. ii. p. 864, and from many charters of his ſucceſſors quoted by Du Cange voc. *Eremus*.

Muratori adds, that during the eighth and ninth centuries, Italy was greatly infeſted by wolves and other wild beaſts; another mark of its being deſtitute of inhabitants. Murat. Antiq. vol. ii. p. 163. Thus Italy, the pride of the ancient

world

world for its fertility and cultivation, was reduced to the ſtate of a country newly peopled, and rendered habitable.

I am ſenſible, not only that ſome of theſe deſcriptions of the devaſtations which I have quoted, may be exaggerated, but that the barbarous tribes proceeded in different manners, in making their new ſettlements. Some of them ſeemed to be bent on exterminating the ancient inhabitants; others were more diſpoſed to incorporate with them. It is not my province either to enquire into the cauſes which occaſioned this variety in the conduct of the conquerors, or to deſcribe the ſtate of thoſe countries where the ancient inhabitants were treated moſt mildly. The facts which I have produced are ſufficient to prove that the deſtruction of the human ſpecies, occaſioned by the hoſtile invaſions of the northern nations, and their ſubſequent ſettlements, was much greater than the generality of writers ſeem to imagine.

NOTE VI. Sect. I. p. 14. [F].

I have obſerved, Note II. that our only certain information concerning the ancient ſtate of the barbarous nations muſt be derived from the Greek and Roman writers. Happily an account of the inſtitutions and cuſtoms of one people, to which thoſe of all the reſt ſeem to have been in a great meaſure ſimilar, has been tranſmitted to us by two authors, the moſt capable, perhaps, that ever

wrote, of obferving them with profound difcernment, and of defcribing them with propriety and force. The reader muft perceive that I have Cæfar and Tacitus in my eye. The former gives a fhort account of the ancient Germans in a few chapters of the fixth book of his commentaries: The latter wrote a treatife exprefsly on that fubject. Thefe are the moft precious and inftructive monuments of antiquity to the prefent inhabitants of Europe. From them we learn,

1. That the ftate of Society among the ancient Germans was of the rudeft and moft fimple form. They fubfifted entirely by hunting or by pafturage. Cæf. lib. vi. c. 21. They neglected agriculture, and lived chiefly on milk, cheefe, and flefh. Ibid. c. 22. Tacitus agrees with him in moft of thefe points; de morib. Germ. c. 14, 15, 23. The Goths were equally negligent of agriculture. Prifc. Rhet. ap. Byz. Script. v. i. p. 31. B. Society was in the fame ftate among the Huns, who difdained to cultivate the earth, or to touch a plough. Amm. Marcel. lib. xxxi. p. 475. The fame manners took place among the Alans; ibid. p. 477. While fociety remains in this fimple ftate, men by uniting together fcarcely relinquifh any portion of their natural independence. Accordingly we are informed, 2. That the authority of civil government was extremely limited among the Germans. During times of peace they had no common or fixed magiftrate, but the chief men

of

of every diſtrict diſpenſed juſtice, and accommodated differences. Cæſ. ibid. c. 23. Their Kings had not abſolute or unbounded power; their authority conſiſted rather in the privilege of adviſing, than in the power of commanding. Matters of ſmall conſequence were determined by the chief men; affairs of importance by the whole community. Tacit. c. 7, 11. The Huns, in like manner, deliberated in common concerning every buſineſs of moment to the ſociety; and were not ſubject to the rigour of regal authority. Amm. Marcel. lib. xxxi. p. 474. 3. Every individual among the ancient Germans was left at liberty to chuſe whether he would take part in any military enterprize which was propoſed; there ſeems to have been no obligation to engage in it impoſed on him by publick authority. "When any of the chief men propoſes any expedition, ſuch as approve of the cauſe and of the leader riſe up, and declare their intention of following him; thoſe who do not fulfil this engagement, are conſidered as deſerters and traitors, and are looked upon as infamous." Cæſ. ibid. c. 23. Tacitus plainly points at the ſame cuſtom, though in terms more obſcure. Tacit. c. 11. 4. As every individual was ſo independent, and maſter in ſo great a degree of his own actions, it became, of conſequence, the great object of every perſon among the Germans who aimed at being a leader, to gain adherents, and attach them to his perſon and intereſt. Theſe adherents Cæſar calls *Ambacti* and *Clientes*, i. e.

i. e. retainers or clients; Tacitus, *Comites*, or companions. The chief diſtinction and power of the leaders, conſiſted in being attended by a numerous band of choſen youth. This was their pride as well as ornament during peace, and their defence in war. The leaders gained or preſerved the favour of theſe retainers by preſents of armour, and of horſes; or by the profuſe, though inelegant hoſpitality, with which they entertained them. Tacit. c. 14, 15. 5. Another conſequence of the perſonal liberty and independence which the Germans retained, even after they united in ſociety, was their circumſcribing the criminal juriſdiction of the magiſtrate within very narrow limits, and their not only claiming but exerciſing almoſt all the rights of private reſentment and revenge. Their magiſtrates had not the power either of impriſoning, or of inflicting any corporal puniſhment on a free man. Tacit. c. 7. Every perſon was obliged to avenge the wrongs which his parents or friends had ſuſtained. Their enmities were hereditary, but not irreconcilable. Even murder was compenſated by paying a certain number of cattle. Tac. c. 21. A part of the fine went to the King, or ſtate, a part to the perſon who had been injured, or to his kindred. Ibid. c. 12.

These particulars concerning the inſtitutions and manners of the Germans, though well known to every perſon converſant in ancient literature, I have thought proper to arrange in this order, and

to

to lay before ſuch of my readers as may be leſs acquainted with theſe facts, both becauſe they confirm the account which I have given of the ſtate of the barbarous nations, and becauſe they tend to illuſtrate all the obſervations that I ſhall have occaſion to make concerning the various changes in their government and cuſtoms. The laws and cuſtoms introduced by the barbarous nations into their new ſettlements, are the beſt commentary on the writings of Cæſar and Tacitus; and their obſervations are the beſt key to a perfect knowledge of theſe laws and cuſtoms.

One circumſtance with reſpect to the teſtimonies of Cæſar and Tacitus concerning the Germans, merits attention. Cæſar wrote his brief account of their manners more than an hundred years before Tacitus compoſed his treatiſe De moribus Germanorum. An hundred years make a conſiderable period in the progreſs of national manners, eſpecially if, during that time, thoſe people who are rude and unpoliſhed have had much communication with more civilized ſtates. This was the caſe with the Germans. Their intercourſe with the Romans began when Cæſar croſſed the Rhine, and increaſed prodigiouſly during the interval between that event and the time when Tacitus flouriſhed. Beſides this, there was a conſiderable difference between the ſtate of ſociety among the different tribes of Germans. The Suiones were ſo much improved, that they began to be corrupted. Tac. cap. 44. The Fenni were ſo barbarous, that it is wonderful

wonderful how they were able to ſubſiſt. Ibid. cap. 46. Whoever undertakes to deſcribe the manners of the Germans, or to found any political theory upon the ſtate of ſociety among them, ought carefully to attend to both theſe circumſtances.

Before I quit this ſubject, it may not be improper to obſerve, that though ſucceſſive alterations in their inſtitutions, together with the gradual progreſs of refinement, have made an entire change in the manners of the various people who conquered the Roman Empire, there is ſtill one race of men nearly in the ſame political ſituation with that in which they were when they firſt ſettled in their new conqueſts: I mean the various tribes and nations of Savages in North America. It cannot then be conſidered either as a digreſſion, or as an improper indulgence of curioſity, to enquire, whether this ſimilarity in their political ſtate has occaſioned any reſemblance between their character and manners. If the likeneſs turns out to be ſtriking, it is a ſtronger proof that a juſt account has been given of the ancient inhabitants of Europe, than the teſtimony even of Cæſar or of Tacitus.

1. The Americans ſubſiſt chiefly by hunting and fiſhing. Some tribes neglect agriculture entirely. Among thoſe who cultivate ſome ſmall ſpot near their huts, that, together with all works of labour, is performed by the women. P. Charlevoix Journal Hiſtorique d'un Voyage de L'Amerique 4°.

Par.

Par. 1744. p. 334. In ſuch a ſtate of ſociety, the common wants of men being few, and their mutual dependence upon each other ſmall, their union is extremely imperfect and feeble, and they continue to enjoy their natural liberty almoſt unimpaired. It is the firſt idea of an American, that every man is born free and independent, and that no power on earth hath any right to diminiſh or circumſcribe his natural liberty. There is hardly any appearance of ſubordination either in civil or domeſtic government. Everyone does what he pleaſes. A father and mother with their children, live like perſons whom chance has brought together, and whom no common bond unites. Their manner of educating their children is ſuitable to this principle. They never chaſtiſe or puniſh them, even during their infancy. As they advance in years, they allow them to be entirely maſters of their own actions, and reſponſible to no body. Id. p. 272, 273.—— 2. The power of their civil magiſtrates is extremely limited. Among moſt of their tribes, the Sachem or chief is elective. A council of old men is choſen to aſſiſt him, without whoſe advice he determines no affair of importance. The Sachems neither poſſeſs nor claim any great degree of authority. They propoſe and intreat rather than command. The obedience of their people is altogether voluntary. Id. p. 266, 268.——3. The ſavages of America engage in any military enterprize, not from conſtraint, but choice. When war is reſolved, a chief ariſes, and offers himſelf to be the leader. They who are willing (for they compel no perſon) ſtand

up

up one after another, and sing their war song. But if after this, any of these should refuse to follow the leader, to whom they have engaged, his life would be in danger, and he would be considered as the most infamous of all men. Id. p. 217, 218. ——4. Such as engage to follow any leader, expect to be treated by him with great attention and respect; and he is obliged to make them presents of considerable value. Id. p. 218.——5. Among the Americans, the magistrate has scarce any criminal jurisdiction. Id. 272. Upon receiving any injury, the person or family offended, may inflict what punishment they please on the person who was the author of it. Id. p. 274. Their resentment and desire of vengeance are excessive and implacable. Time can neither extinguish or abate it. It is the chief inheritance parents leave to their children; it is transmitted from generation to generation, until an occasion be found of satisfying it. Id. p. 309. Sometimes, however, the offended party is appeased. A compensation is paid for a murder that has been committed. The relations of the deceased receive it; and it consists most commonly of a captive taken in war, who being substituted in place of the person who was murdered, assumes his name, and is adopted into his family. Id. p. 274. The resemblance holds in many other particulars. It is sufficient for my purpose to have pointed out the similarity of those great features which distinguish and characterize both people. Bochart, and other philologists of the last century, who, with more erudition

than

than ſcience, endeavoured to trace the migrations of various nations, and who were apt, upon the ſlighteſt appearance of reſemblance, to find an affinity between nations far removed from each other, and to conclude that they were deſcended from the ſame anceſtors, would hardly have failed, on viewing ſuch an amazing ſimilarity, to pronounce with confidence, "That the Germans and Americans muſt be the ſame people." But a philoſopher will ſatisfy himſelf with obſerving, "That the characters of nations depend on the ſtate of ſociety in which they live, and on the political inſtitutions eſtabliſhed among them; and that the human mind, whenever it is placed in the ſame ſituation, will, in ages the moſt diſtant, and in countries the moſt remote, aſſume the ſame form, and be diſtinguiſhed by the ſame manners."

I HAVE puſhed the compariſon between the Germans and Americans no farther than was neceſſary for the illuſtration of my ſubject. I do not pretend that the ſtate of ſociety in the two countries was perfectly ſimilar. Many of the German tribes were more civilized than the Americans. Some of them were not unacquainted with agriculture; almoſt all of them had flocks of tame cattle, and depended for the chief part of their ſubſiſtence upon theſe. Moſt of the American tribes ſubſiſt by hunting, and are in a ruder and more ſimple ſtate than the ancient Germans. The reſemblance, however, between their condition, is greater perhaps than any that hiſtory affords an opportunity

opportunity of obſerving between two races of uncivilized nations, and this has produced a ſurprizing ſimilarity of manners.

NOTE VII. Sect. I. p. 14. [G].

The booty gained by an army belonged to the army. The King himſelf had no part of it but what he acquired by lot. A remarkable inſtance of this occurs in the hiſtory of the Franks. The army of Clovis, the founder of the French monarchy, having plundered a church, carried off, among other ſacred utenſils, a vaſe of extraordinary ſize and beauty. The biſhop ſent deputies to Clovis, beſeeching him to reſtore the vaſe, that it might be again employed in the ſacred ſervices to which it had been conſecrated. Clovis deſired the the deputies to follow him to Soiſſons, as their booty was to be divided in that place, and promiſed, that if the lot ſhould give him the diſpoſal of the vaſe, he would grant what the biſhop deſired. When he came to Soiſſons, and all the booty was placed in one great heap in the middle of the army, Clovis intreated, that before making the diviſion, they would give him that vaſe over and above his ſhare. All appeared willing to gratify the King, and to comply with his requeſt, when a fierce and haughty ſoldier lifted up his battle-axe, and ſtriking the vaſe with the utmoſt violence, cried out with a loud voice, "You ſhall receive nothing here but that to which the lot gives you a right." Gregor. Turon, Hiſtor. Francorum. lib. ii. c. 27. p. 70. Par. 1610.

NOTE VIII. Sect. I. p. 18. [H].

The hiſtory of the eſtabliſhment and progreſs of the feudal ſyſtem, is an intereſting object to all the nations of Europe. In ſome countries, their juriſprudence and laws are ſtill in a great meaſure feudal. In others, many forms and practices eſtabliſhed by cuſtom, or founded on ſtatutes, took their riſe from the feudal law, and cannot be underſtood without attending to the ideas peculiar to it. Several authors of the higheſt reputation for genius and erudition, have endeavoured to illuſtrate this ſubject, but they have left many parts of it obſcure. I ſhall endeavour to trace, with preciſion, the progreſs and variation of ideas concerning property in land among the barbarous nations; and ſhall attempt to point out the cauſes which introduced theſe changes, as well as the effects which followed upon them. Property in land ſeems to have gone through four ſucceſſive changes among the people who ſettled in the various provinces of the Roman Empire.

I. While the barbarous nations remained in their original countries, they had no fixed property in land, and no certain limits to their poſſeſſions. After feeding their flocks in one diſtrict, they removed with them, their wives and families, to another; and abandoned that likewiſe in a ſhort time. They were not, in conſequence of this imperfect ſpecies of property, brought under any poſitive or formal obligation to ſerve the community; all their ſervices

ſervices were purely voluntary. Every individual was at liberty to chuſe how far he would contribute towards carrying on any military enterprize. If he followed a leader in any expedition, it was from attachment, not from a ſenſe of obligation. The cleareſt proof of this has been produced in Note VI. While property continued in this ſtate, we can diſcover nothing that bears any reſemblance to a feudal tenure, or to the ſubordination and military ſervice which the feudal ſyſtem introduced.

II. UPON ſettling in the countries which they had ſubdued, the victorious troops divided the conquered lands. That portion which fell to every ſoldier, he ſeized as a recompence due to his valour, as a ſettlement acquired by his own ſword. He took poſſeſſion of it as a freeman in full property. He enjoyed it during his own life, and could diſpoſe of it at pleaſure, or tranſmit it as an inheritance to his children. Thus property in land became fixed. It was at the ſame time *allodial*, i. e. the poſſeſſor had the entire right of property and dominion; he held of no ſovereign or ſuperior lord, to whom he was bound to do homage, and perform ſervice. But as theſe new proprietors were in ſome danger (as has been obſerved in the text) of being diſturbed by the remainder of the ancient inhabitants, and in ſtill greater danger of being attacked by ſucceſſive colonies of barbarians as fierce and rapacious as themſelves, they ſaw the neceſſity of coming under obligations

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obligations to defend the community, more explicit than those to which they had been subject in their original habitations. On this account, immediately upon their fixing in their new settlements, every freeman became bound to take arms in defence of the community, and if he refused or neglected so to do, was liable to a considerable penalty. I do not mean that any contract of this kind was formally concluded, or mutually ratified by any legal solemnity. It was established by tacit consent, like the other compacts which hold society together; and their mutual security and preservation made it the interest of all to recognize its authority, and to enforce the observation of it. We can trace back this new obligation on the proprietors of land to a very early period in the history of the Franks. Chilperic, who began his reign A. D. 562, exacted a fine, *bannos jussit exigi*, from certain persons who had refused to accompany him in an expedition. Gregor. Turon. lib. v. c. 26. p. 211. Childibert, who began his reign A. D. 576, proceeded in the same manner against others who had been guilty of a like crime. Id. lib. vii. c. 42. p. 342. Charlemagne ordained, that every freeman who possessed five mansi, i. e. sixty acres of land, *in property*, should march in person against the enemy. Capitul. A. D. 807. Louis le Debonnaire, A. D. 815, granted lands to certain Spaniards who fled from the Saracens, and allowed them to settle in his territories, on condition that they should serve in the army

like other free men. Capitul. vol. i. p. 500. By land poſſeſſed *in property*, which is mentioned in the law of Charlemagne, we are to underſtand, according to the ſtile of that age, allodial land; *alodes* and *proprietas*, *alodum* and *proprium* being words perfectly ſynonimous. Du Cange voce Alodis. The cleareſt proof of the diſtinction between allodial and beneficiary poſſeſſion, is contained in two charters publiſhed by Muratori, by which it appears that a perſon might poſſeſs one part of his eſtate as allodial, which he could diſpoſe of at pleaſure, the other as a beneficium, of which he had only the uſufruct, the property returning to the ſuperior Lord on his demiſe. Antiq. Ital. medii ævi, vol. i. p. 559, 565. The ſame diſtinction is pointed out in a Capitulare of Charlemagne, A. D. 812. edit. Baluz. vol. i. p. 491. In the curious teſtament of count Everard, who married a daughter of Louis le Debonnaire, by which he diſpoſes of his vaſt eſtate among his children, he diſtinguiſhes between what he poſſeſſed *proprietate*, and what he held *beneficio*, and it appears that the greater part was allodial. A. D. 837. Aub. Miræi Opera Diplomatica Lovan. 1723. Vol. p. 19.

In the ſame manner *Liber homo* is commonly oppoſed to *Vaſſus* or *Vaſſallus*; the former denotes an allodial proprietor, the latter one who held of a ſuperior. Theſe *free* men were under an obligation to ſerve the ſtate; and this duty was conſidered

ſidered as ſo ſacred, that free men were prohibited from entering into holy orders unleſs they had obtained the conſent of the ſovereign. The reaſon given for this in the ſtatute is remarkable, "For we are informed that ſome do ſo, not ſo much out of devotion, as in order to avoid that military ſervice which they are bound to perform. Capitul. lib. i. § 114. If upon being ſummoned into the field, any free man refuſed to obey, a full *Herebannum*, i. e. a fine of ſixty crowns, was to be exacted from him according to the law of the Franks." Capit. Car. magn. ap. Leg. Longob. lib. i. tit. 14. § 13. p. 539. This expreſſion, according to the law of the Franks, ſeems to imply that both the obligation to ſerve, and the penalty on thoſe who diſregarded it, were coëval with the laws made by the Franks at their firſt ſettlement in Gaul. This fine was levied with ſuch rigour, "That if any perſon convicted of this crime was inſolvent, he was reduced to ſervitude, and continued in that ſtate until ſuch time as his labour ſhould amount to the value of the *herebannum*." Ibid. The Emperor Lotharius rendered the penalty ſtill more ſevere; and if any perſon poſſeſſing ſuch an extent of property as made it incumbent on him to take the field in perſon refuſed to obey the ſummons, all his goods were declared to be forfeited, and he himſelf might be puniſhed with baniſhment. Murat. Script. Ital. vol. i. pars ii. p. 153.

III. PROPERTY in land having thus become fixed and ſubject to military ſervice, another change was introduced, though ſlowly, and ſtep by ſtep. We learn from Tacitus, that the chief men among the Germans endeavoured to attach to their perſons and intereſts certain adherents, whom he calls *Comites*. Theſe fought under their ſtandard, and followed them in all their enterprizes. The ſame cuſtom continued among them in their new ſettlements, and thoſe attached or devoted followers were called *fideles*, *antruſtiones*, *homines in truſte Dominica*, *leudes*. Tacitus informs us, that the rank of a Comes was deemed honourable; De morib. Germ. c. 13. The compoſition, which is the ſtandard by which we muſt judge of the rank and condition of perſons in the middle ages, paid for the murder of one *in truſte Dominica*, was triple to that paid for the murder of a freeman. Leg. Salicor. Tit. 44. § 1. & 2. While the Germans remained in their own country they courted the favour of theſe Comites by preſents of arms and horſes, and by hoſpitality. See Note VI. As long as they had no fixed property in land, theſe were the only gifts that they could beſtow, and the only reward which their followers deſired. But upon their ſettling in the countries which they conquered, and when the value of property came to be underſtood among them, inſtead of theſe ſlight preſents, the Kings and chieftains beſtowed a more ſubſtantial recompence in land on their adherents. Theſe grants were called *beneficia*, be-

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caufe they were gratuitous donations; and *honores*, becaufe they were regarded as marks of diftinction. What were the fervices originally exacted in return for thefe *beneficia* cannot be determined with abfolute precifion; becaufe there are no records fo ancient. When allodial poffeffions were firft rendered feudal, they were not, at once, fubjected to all the feudal fervices. The tranfition here, as in all other changes of importance, was gradual. As the great object of a feudal vaffal was to obtain protection, when allodial proprietors firft confented to become vaffals of any powerful leader, they continued to retain as much of their ancient independence as was confiftent with that new relation. The homage which they did to the fuperior of whom they chofe to hold, was called *homagium planum*, and bound them to nothing more than fidelity, but without any obligation either of military fervice, or attendance in the courts of their fuperior. Of this *homagium planum* fome traces, though obfcure, may ftill be difcovered. Bruffel, tom. i. p. 97. Among the ancient writs publifhed by D. D. De Vic & Vaifette hift. de Langued. are a great many which they call homagia. They feem to be an intermediate ftep between the homagium planum mentioned by Bruffel, and the engagement to perform complete feudal fervice. The one party promifes protection, and grants certain caftles or lands, the other engages to defend the perfon of the granter, and to affift him likewife in defending his property as often as he fhall

be ſummoned to do ſo. But theſe engagements are accompanied with none of the feudal formalities, and no mention is made of any of the other feudal ſervices. They appear rather to be a mutual contract between equals, than the engagement of a vaſſal to perform ſervices to a ſuperior Lord. Preuves de l'hiſt. de Lang. tom. ii. 173. & paſſim. As ſoon as men were accuſtomed to theſe, the other feudal ſervices were gradually introduced. M. de Monteſquieu conſiders theſe *beneficia* as fiefs, which originally ſubjected thoſe who held them to military ſervice. L'eſpr. des Loix, l. xxx. c. 3. & 16. M. L'abbè de Mably contends that ſuch as held theſe were at firſt ſubjected to no other ſervice than what was incumbent on every free man. Obſervations ſur l'hiſtoire de France I. 356. But upon comparing their proofs and reaſonings and conjectures, it ſeems to be evident, that as every free man, in conſequence of his allodial property, was bound to ſerve the community under a ſevere penalty, no good reaſon can be aſſigned for conferring theſe beneficia, if they did not ſubject ſuch as received them, to ſome new obligation. Why ſhould a King have ſtripped himſelf of his domain, if he had not expected, that, by parcelling it out, he might acquire a right to ſervices to which he had formerly no title? We may then warrantably conclude, "That as allodial property ſubjected thoſe who poſſeſſed it to ſerve the community, ſo *beneficia* ſubjected ſuch as held them, to perſonal ſervice and fidelity

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to him from whom they received theſe lands. Theſe beneficia were granted originally only during pleaſure. No circumſtance relating to the cuſtoms of the middle ages is better aſcertained than this; and innumerable proofs of it might be added to theſe produced in L'eſprit des Loix, l. xxx. c. 16. and by Du Cange voc. *beneficium & feudum.*

IV. But the poſſeſſion of benefices did not continue long in this ſtate. A precarious tenure during pleaſure, was not ſufficient to ſatisfy thoſe who held it, and to attach them to their ſuperior Lord, they ſoon obtained the confirmation of their benefices during life. Feudor. lib. tit. i. Du Cange produces ſeveral quotations from ancient charters and chronicles in proof of this; Gloſs. voc. *Beneficium.* After this it was eaſy to obtain or extort charters rendering beneficia hereditary, firſt in the direct line, then in the collateral, and at laſt in the female line. Leg. Longob. lib. iii. tit. 8. Du Cange, voc. *Beneficium.*

It is no eaſy matter to fix the preciſe time when each of theſe changes took place. M. l'Ab. Mably conjectures with ſome probability, that Charles Martel firſt introduced the practice of granting beneficia for life: Obſervat. tom. i. p. 103, 160; and that Louis le Debonnaire was among the firſt who rendered them hereditary, is evident from the authorities to which he refers; Id. 429. Mabillon however has publiſhed a placitum of Louis le Debonnaire, A. D. 860. by which it appears, that he

ftill continued to grant fome beneficia only during life. De re Diplomatica, lib. vi. p. 353. In the year 889, Odo King of France granted lands to Ricabodo fideli fuo jure beneficiario & fructuario during his own life; and if he fhould die, and a fon were born to him, that right was to continue during the life of his fon. Mabillon ut fupra, p. 556. This was an intermediate ftep between fiefs merely during life, and fiefs hereditary to perpetuity. While beneficia continued under their firft form, and were held only during pleafure, he who granted them not only exercifed the *Dominium* or prerogative of fuperior Lord, but he retained the property, giving his vaffal only the *ufufruct*. But under the latter form, when they became hereditary, although feudal lawyers continued to define a beneficium agreeably to its original nature, the property was in effect taken out of the hands of the fuperior Lords, and lodged in thofe of the vaffal. As foon as the reciprocal advantages of the feudal mode of tenure came to be underftood by fuperiors as well as vaffals, that fpecies of holding became fo agreeable to both, that not only lands, but cafual rents, fuch as the profits of a toll, the fare paid at ferries, &c. the falaries or perquifites of offices, and even penfions themfelves, were granted and held as fiefs; and military fervice was promifed and exacted on account of thefe. Morice Mem. pour fervir de preuves a l'hift. de Bretagne, tom. ii. 78. 690. Bruffel, tom. i. p. 41. How abfurd foever it may feem to grant or to hold fuch precarious

rious and casual property as a fief, there are instances of feudal tenures still more singular. The profits arising from the masses said at an altar, were properly an ecclesiastical revenue, belonging to the clergy of the church or monastery which performed that duty, but these were sometimes seized by the powerful barons. In order to ascertain their right to them, they held them as fiefs of the church, and parcelled them out in the same manner as other property to their sub-vassals. Bouquet. recueil des hist. vol. x. 238. 480. The same spirit of encroachment which rendered fiefs hereditary, led the nobles to extort from their sovereigns hereditary grants of offices. Many of the great offices of the crown became hereditary in most of the kingdoms in Europe; and so conscious were monarchs of this spirit of usurpation among the nobility, and so solicitous to guard against it, that, on some occasions, they obliged the persons whom they promoted to any office of dignity, to grant an obligation that neither they, nor their heirs, should claim it as belonging to them by hereditary right. A remarkable instance of this is produced, Mem. de l'Acad. des Inscript. tom. xxx. p 595. Another occurs in the Thesaur. anecdot. published by Martene & Durand. vol. i. p. 873.—This revolution in property occasioned a change corresponding to it in political government; the great vassals of the crown, as they acquired such extensive possessions, usurped a proportional degree of power, depressed the jurisdiction of the crown, and trampled on the

the privileges of the people. It is on account of this connection, that the tracing the progreſs of feudal property becomes an object of attention in hiſtory; for upon diſcovering in what ſtate property was at any particular period, we may determine with preciſion what was the degree of power poſſeſſed by the King or by the nobility at that juncture.

One circumſtance more, with reſpect to the changes which property underwent, deſerves attention. I have ſhewn, that when the various tribes of barbarians divided their conqueſts in the fifth and ſixth centuries, the property which they acquired was allodial; but in ſeveral parts of Europe, property had become almoſt entirely feudal by the beginning of the tenth century. The former ſpecies of property ſeems to be ſo much better and more deſirable than the latter; that ſuch a change appears ſurprizing, eſpecially when we are informed that allodial property was frequently converted into feudal, by a voluntary deed of the poſſeſſor. The motives which determined them to a choice ſo repugnant to the ideas of modern times concerning property, have been inveſtigated and explained by M. de Monteſquieu with his uſual diſcernment and accuracy, lib. xxxi. c. 8. The moſt conſiderable is that of which we have an hint in Lambertus Ardenſis, an ancient writer quoted by Du Cange, voce *Alodis*. In thoſe times of anarchy and diſorder which became general in Europe after

after the death of Charlemagne, when there was ſcarcely any union among the different members of the community, and individuals were expoſed, ſingle and undefended by government, to rapine and oppreſſion, it became neceſſary for every man to have a powerful protector, under whoſe banner he might range himſelf, and obtain ſecurity againſt enemies whom he could not ſingly oppoſe. For this reaſon he relinquiſhed his allodial independence, and ſubjected himſelf to the feudal ſervices, that he might find ſafety under the patronage of ſome reſpectable ſuperior. In ſome parts of Europe, this change from allodial to feudal property became ſo general, that he who poſſeſſed land had no longer any liberty of choice left. He was obliged to recognize ſome liege Lord, and to hold of him. Thus Beaumanoir informs us, that in the counties of Clermont and Beauvois, if the Lord or Count diſcovered any lands within his juriſdiction, for which no ſervice was performed, and which paid to him no tax or cuſtoms, he might inſtantly ſeize it as his own; for, ſays he, according to our cuſtom no man can hold allodial property. Couſt. ch. 24. p. 123. Upon the ſame principle is founded a maxim, which has at length become general in the law of France, *Nulle terre ſans Seigneur*. In other provinces of France, allodial property ſeems to have remained longer unalienated, and to have been more highly valued. A vaſt number of charters containing grants, or ſales, or exchanges of allodial lands in the province of Languedoc are publiſhed Hiſt. gener. de Langued.

par

par D. D. De Vic & Vaiſette, tom. ii. During the ninth, tenth, and great part of the eleventh century, the property in that province ſeems to have been entirely allodial; and ſcarcely any mention of feudal tenures occurs in the deeds of that country. The ſtate of property, during theſe centuries, ſeems to have been perfectly ſimilar in Catalonia, and the country of Rouſſillon, as appears from the original charters publiſhed in the appendix to Petr. de la Marca's treatiſe de Marca ſive limite Hiſpanico. Allodial property ſeems to have continued in the Low Countries, to a period ſtill later. During the eleventh, twelfth, and thirteenth centuries, this ſpecies of property appears to have been of conſiderable extent. Miræi opera Diplom. vol. i. 34, 74, 75. 83, 817, 296, 842, 847, 578. Some veſtiges of allodial property appear there as late as the fourteenth century. Ibid. 218. Several facts which prove that allodial property ſubſiſted in different parts of Europe long after the introduction of feudal tenures, and which tend to illuſtrate the diſtinction between theſe two different ſpecies of poſſeſſion, are produced by M. Houard. Anciennes Loix des François, conſervées dans les Coutumes Angloiſes, vol. i. p. 192, &c. The notions of men with reſpect to property, vary according to the diverſity of their underſtandings, and the caprice of their paſſions. At the ſame time that ſome perſons were fond of relinquiſhing allodial property, in order to hold it by feudal tenure, others ſeem to have been ſolicitous to convert their fiefs into allodial property. An inſtance of this

occurs in a charter of Louis le Debonnaire, published by Eckhard, Commentarii de rebus Franciæ Orientalis, vol. ii. 885. Another occurs in the year 1299. Reliquiæ MSS. omnis ævi, by Ludwig, vol. i. p. 209. and even one as late as the year 1337. ibid. vol. vii. p. 40. The ſame thing took place in the Low-Countries. Miræi oper. I. 52.

In tracing theſe various revolutions of property, I have hitherto chiefly confined myſelf to what happened in France, becauſe the ancient monuments of that nation have either been more carefully preſerved, or have been more clearly illuſtrated than thoſe of any people in Europe.

In Italy, the ſame revolutions happened in property, and ſucceeded each other in the ſame order. There is ſome ground, however, for conjecturing that allodial property continued longer in eſtimation among the Italians, than among the French. It appears, that many of the charters granted by the Emperors in the ninth century, conveyed an allodial right to land. Murat. antiq. med. ævi. v. i. p. 575, &c. But in the eleventh century, we find ſome examples of perſons who reſigned their allodial property, and received it back as a feudal tenure. Id. p. 610, &c. Muratori obſerves, that the word *feudum*, which came to be ſubſtituted in place of *beneficium*, does not occur in any authentick charter previous to the eleventh century. Id. 594. A charter of King Robert of France, A. D. 1008, is the earlieſt deed in which I have met with

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the word *feudum*. Bouquet recueil des historiens de Gaule & de la France, tom. x. p. 593. b. This word occurs indeed in an edict, A. D. 790, published by Brussel, vol. i. p. 77. But the authenticity of that deed has been called in question, and perhaps the frequent use of the word *feudum* in it, is an additional reason for doing so. The account which I have given of the nature both of allodial and feudal possessions receives some confirmation from the etymology of the words themselves. *Alode* or *allodium* is compounded of the German particle *an* and *lot*, *i. e.* land obtained by lot. Wachteri Glossar. Germanicum, voc. *Allodium*, p. 35. It appears from the authorities produced by him and by Du Cange, voc. *sors*, that the northern nations divided the lands which they had conquered in this manner. Feodum is compounded of *od* possession or estate, and *feo* wages, pay; intimating that it was stipendiary and granted as a recompence for service. Wachterus ibid. voc. *feodum*, p. 441.

The progress of the feudal system among the Germans was perfectly similar to that which we have traced in France. But as the Emperors of Germany, especially after the Imperial crown passed from the descendants of Charlemagne to the house of Saxony, were far superior to the contemporary Monarchs of France, in abilities, the Imperial vassals did not aspire so early to independence, nor did they so soon obtain the privilege of possessing their benefices by hereditary

 right.

right. According to the compilers of the Libri Feudorum, Conrad II. or the Salic, was the firſt Emperor, who rendered fiefs hereditary. Lib. i. tit. 1. Conrad began his reign A. D. 1024. Ludovicus Pius, under whoſe reign, grants of hereditary fiefs were frequent in France, ſucceeded his father, A. D. 814. Not only was this innovation ſo much later in being introduced among the vaſſals of the German Emperors, but even after Conrad had eſtabliſhed it, the law continued favourable to the ancient practice, and unleſs the charter of the vaſſal bore expreſsly that the fief deſcended to his heirs, it was preſumed to be granted only during life. Lib. feud. ibid. Even after the alteration made by Conrad, it was not uncommon in Germany to grant fiefs only for life; a charter of this kind occurs as late as the year 1376. Charta ap. Boehmer. Princip. Jur. feud. p. 361. The tranſmiſſion of fiefs to collateral and female heirs, took place very ſlowly among the Germans. There is extant a charter, A. D. 1201. conveying the right of ſucceſſion to females, but it is granted as an extraordinary mark of favour, and in reward of uncommon ſervices. Boehmer. ibid. p. 365. In Germany, as well as in France and Italy, a conſiderable part of the lands continued to be allodial long after the feudal mode of tenure was introduced. It appears from the Codex Diplomaticus Monaſterii Buch, that a great part of the lands in the marquiſate of Miſnia was ſtill allodial as late as the thirteenth century. N° 31, 36, 37, 46, &c. ap. Scriptores hiſt. German.

man. cura Schoetgenii & Kreyſigii. Altenb. 1755. vol. ii. 183, &c. Allodial property ſeems to have been common in another diſtrict of the ſame province, during the ſame period. Reliquiæ Diplomaticæ Sanctimonial. Beutiz. N° 17, 36, 58. ibid. 374, &c.

NOTE IX. SECT. I. p. 19. [I].

As I ſhall, in another note, have occaſion to repreſent the condition of that part of the people who dwelt in cities, I will confine myſelf in this to conſider the ſtate of the inhabitants of the country. The perſons employed in cultivating the ground during the ages under review may be divided into three claſſes: I. *Servi* or ſlaves. This ſeems to have been the moſt numerous claſs, and conſiſted either of captives taken in war, or of perſons the property in whom was acquired in ſome one of the various methods enumerated by Du Cange, voc. *ſervus*, v. 6. p. 447. The wretched condition of this numerous race of men will appear from ſeveral circumſtances. 1. Their maſters had abſolute dominion over their perſons. They had the power of puniſhing their ſlaves capitally, without the intervention of any judge. This dangerous right they poſſeſſed not only in the more early periods, when their manners were fierce, but it continued as late as the twelfth century. Joach. Potgieſſerus de ſtatu ſervorum. Lemgov. 1736. 4to. lib. ii. cap. 1. § 4, 10, 13, 24. Even after this juriſdiction of maſters came to be reſtrained, the life of a ſlave was deemed to be

be of ſo little value, that a very ſlight compenſation attoned for taking it away. Idem, lib. iii. c. 6. If maſters had power over the lives of their ſlaves, it is evident that almoſt no bounds would be ſet to the rigour of the puniſhments which they might inflict upon them. The Codes of ancient laws preſcribed puniſhments for the crimes of ſlaves different from thoſe which were inflicted on free men. The latter paid only a fine or compenſation, the former were ſubjected to corporal puniſhments. The cruelty of theſe was in many inſtances exceſſive. Slaves might be put to the rack on very ſlight occaſions. The laws with reſpect to theſe points are to be found in Potgieſſerus, lib. iii. cap. 7. 2. If the dominion of maſters over the lives and perſons of their ſlaves was thus extenſive, it was no leſs ſo over their actions and property. They were not originally permitted to marry. Male and female ſlaves were allowed and even encouraged to cohabit together. But this union was not conſidered as a marriage, it was called *contubernium*, not *nuptiæ* or *matrimonium*. Potgieſſ. lib. ii. c. 2. § 1. This notion was ſo much eſtabliſhed, that during ſeveral centuries after the barbarous nations embraced the Chriſtian religion, ſlaves who lived as huſband and wife, were not joined together by any religious ceremony, and did not receive the nuptial benediction from a prieſt. Ibid. § 10, 11. When this conjunction between ſlaves came to be conſidered as a lawful marriage, they were not permitted to marry without the conſent of their maſter, and

ſuch as ventured to do ſo without obtaining that, were puniſhed with great ſeverity, and ſometimes were put to death. Potgieſſ. ibid. § 12, &c. Gregor. Turon. hiſtor. lib. v. c. 3. When the manners of the European nations became more gentle, and their ideas more liberal, ſlaves who married without their maſter's conſent, were ſubjected only to a fine. Potgieſſ. ibid. § 20. Du Cange Gloſſ. voc. *Foriſmaritagium*. 3. All the children of ſlaves were in the ſame condition with their parents, and became the property of the maſter. Du Cange Gloſſ. voc. *ſervus*, vol. vi. 450. Murat. antiq. Ital. vol. i. 766. 4. Slaves were ſo entirely the property of their maſters, that they could ſell them at pleaſure. While domeſtick ſlavery continued, the property in a ſlave was ſold in the ſame manner with that which a perſon had in any other moveable. Afterwards ſlaves became *adſcripti* glebæ, and were conveyed by ſale, together with the farm or eſtate to which they belonged. Potgieſſerus has collected the laws and charters which illuſtrate this well-known circumſtance in the condition of ſlaves. Lib. ii. c. 4. 5. Slaves had a title to nothing but ſubſiſtence and clothes from their maſter; all the profits of their labour accrued to him. If a maſter, from indulgence, gave his ſlaves any *peculium* or fixed allowance for their ſubſiſtence, they had no right of property in what they ſaved out of that. All that they accumulated belonged to their maſter. Potgieſſ. lib. ii. c. 10. Murat. antiq. Ital. vol. 768. Du Cange, voc. *ſervus*, vol. vi. p. 451. Conformably

formably to the ſame principle, all the effects of ſlaves belonged to their maſter at their death, and they could not diſpoſe of them by teſtament. Potgieſſ. lib. ii. c. 11. 6. Slaves were diſtinguiſhed from free men by a peculiar dreſs. Among all the barbarous nations, long hair was a mark of dignity and of freedom, ſlaves were for that reaſon obliged to ſhave their heads; and by this diſtinction, how indifferent ſoever it may be in its own nature, they were reminded every moment of the inferiority of their condition. Potgieſſ. lib. iii. c. 4. For the ſame reaſon it was enacted in the laws of almoſt all the nations of Europe, that no ſlave ſhould be admitted to give evidence againſt a free man in a court of juſtice. Du Cange, voc. *ſervus*, vol. vi. p. 451. Potgieſſ. lib. iii. c. 3.

2. *Villani.* They were likewiſe *adſcripti glebæ* or *villæ*, from which they derived their name, and were transferable along with it. Du Cange, voc. *villanus.* But in this they differed from ſlaves, that they paid a fixed rent to their maſter for the land which they cultivated, and after paying that, all the fruits of their labour and induſtry belonged to themſelves in property. This diſtinction is marked by Piere de Fontaine's Conſeil. Vie de St. Louis par Joinville, p. 119. edit. de Du Cange. Several caſes decided agreeably to this principle are mentioned by Murat. Ibid. p. 773.

3. The laſt claſs of perſons employed in agriculture were free men. Theſe are diſtinguiſhed

by various names among the writers of the middle ages, *Arimanni*, *conditionales*, *originarii*, *tributales*, *&c.* These seem to have been persons who possessed some small allodial property of their own, and besides that, cultivated some farm belonging to their more wealthy neighbours, for which they paid a fixed rent; and bound themselves likewise to perform several small services *in prato vel in messe, in aratura vel in vinea*, such as ploughing a certain quantity of their landlord's ground, assisting him in harvest and vintage work, &c. The clearest proof of this may be found in Muratori, v. i. p. 712. and in Du Cange under the respective words abovementioned. I have not been able to discover whether these *arimanni*, &c. were removeable at pleasure, or held their farms by lease for a certain number of years. The former, if we may judge from the genius and maxims of the age, seems to be most probable. These persons, however, were considered as free men in the most honourable sense of the word; they enjoyed all the privileges of that condition, and were even called to serve in war; an honour to which no slave was admitted. Murat. Antiq. vol. i. p. 743. vol. ii. p. 446. This account of the condition of these three different classes of persons, will enable the reader to apprehend the full force of an argument which I shall produce in confirmation of what I have said in the text concerning the wretched state of the people during the middle ages. Notwithstanding the immense difference between the first of these classes and the third, such was the spirit

ſpirit of tyranny which prevailed among the great proprietors of land, and ſo various their opportunities of oppreſſing thoſe who were ſettled on their eſtates, and of rendering their condition intolerable, that many free men, in deſpair, renounced their liberty, and voluntarily ſurrendered themſelves as ſlaves to their powerful maſters. This they did, in order that their maſters might become more immediately intereſted to afford them protection, together with the means of ſubſiſting themſelves and their families. The forms of ſuch a ſurrender, or *obnoxiatio*, as it was then called, are preſerved by Marculfus, lib. ii. c. 28; and by the anonymous author publiſhed by M. Bignon, together with the collection of *formulæ* compiled by Marculfus, c. 16. In both, the reaſon given for the *obnoxiatio*, is the wretched and indigent condition of the perſon who gives up his liberty. It was ſtill more common for free men to ſurrender their liberty to biſhops or abbots, that they might partake of the ſecurity which the vaſſals and ſlaves of churches and monaſteries enjoyed, in conſequence of the ſuperſtitious veneration paid to the ſaint under whoſe immediate protection they were ſuppoſed to be taken. Du Cange, voc. *oblatus*, vol. iv. p. 1286. That condition muſt have been miſerable indeed, which could induce a free man voluntarily to renounce his liberty, and to give up himſelf as a ſlave to the diſpoſal of another. The number of ſlaves in all the nations of Europe was prodigious. The greater part of the inferior

clafs of people in France were reduced to this ftate, at the commencement of the third race of Kings. L'efpr. des Loix, liv. xxx. c. 11. The fame was the cafe in England. Brady Pref. to Gen. Hift. Many curious facts with refpect to the ancient ftate of *villains* or flaves in England, are publifhed in Obfervations on the ftatutes, chiefly the more ancient, 2d edit. p. 244.

NOTE X. SECT. I. p. 22. [K].

INNUMERABLE proofs of this might be produced. Many charters granted by perfons of the higheft rank are preferved, from which it appears that they could not fubfcribe their name. It was ufual for perfons who could not write, to make the fign of the crofs in confirmation of a charter. Several of thefe remain, where Kings and perfons of great eminence affix *fignum crucis manu propria pro ignoratione literarum.* Du Cange, voc. Crux, vol. iii. p. 1191. From this is derived the phrafe of figning inftead of fubfcribing a paper. In the ninth century, Herbaud Comes Palatii, though fupreme judge of the Empire by virtue of his office, could not fubfcribe his name. Nouveau Traité de Diplomatique par deux Benedictins, 4to. tom. ii. p. 422. So late as the fourteenth century, Du Guefclin, conftable of France, the greateft man in the ftate, and one of the greateft men of his age, could neither read nor write. St. Palaye Memoires fur l'ancienne Chevalerie, t. ii. p. 82.

p. 82. Nor was this ignorance confined to laymen; the greater part of the clergy was not many degrees superior to them in ſcience. Many dignified eccleſiaſticks could not ſubſcribe the canons of thoſe councils, in which they ſat as members. Nouv. Traité de Diplom. tom. ii. p. 424. One of the queſtions appointed by the canons to be put to perſons who were candidates for orders was this, "Whether they could read the goſpels and epiſtles, and explain the ſenſe of them, at leaſt literally?" Regino Prumienſis ap. Bruck. Hiſt. Philoſ. v. iii. p. 631. Alfred the Great complained, that from the Humber to the Thames there was not a prieſt who underſtood the liturgy in his mother-tongue, or who could tranſlate the eaſieſt piece of Latin; and that from the Thames to the ſea, the eccleſiaſticks were ſtill more ignorant. Aſſerus de rebus geſtis Alfredi, ap. Camdeni. Anglica, &c. p. 25. The ignorance of the clergy is quaintly deſcribed by an author of the dark ages. "Potius dediti gulæ quam Gloſſæ; potius colligunt libras quam legunt libros; libentius intuentur Martham quam Marcum; malunt legere in Salmone quam in Solomone. Alanus de art. Predicat. ap. Lebeuf. Diſſert. tom. ii. p. 21. To the obvious cauſes of ſuch univerſal ignorance, ariſing from the ſtate of government and manners, from the ſeventh to the eleventh century, we may add the ſcarcity of books during that period, and the difficulty of rendering them more common. The Romans wrote their books either on parch-

ment or on paper made of the Egyptian papyrus. The latter being the cheapeſt, was of courſe the moſt commonly uſed. But after the Saracens conquered Egypt in the ſeventh century, the communication between that country and the people ſettled in Italy or in other parts of Europe, was almoſt entirely broken off, and the papyrus was no longer in uſe among them. They were obliged, on that account, to write all their books upon parchment, and as the price of that was high, books became extremely rare and of great value. We may judge of the ſcarcity of the materials for writing them from one circumſtance. There ſtill remain ſeveral manuſcripts of the eighth, ninth, and following centuries, wrote on parchment, from which ſome former writing had been eraſed, in order to ſubſtitute a new compoſition in its place. In this manner, it is probable, that ſeveral works of the ancients periſhed. A book of Livy or of Tacitus might be eraſed, to make room for the legendary tale of a ſaint, or the ſuperſtitious prayers of a miſſal. Murat. Antiq. Ital. v. iii. p. 833. P. de Montfaucon affirms, that the greater part of the manuſcripts on parchment which he has ſeen, thoſe of an ancient date excepted, are written on parchment from which ſome former treatiſe had been eraſed. Mem. de l'Acad. des inſcript. tom. ix. p. 325. As the want of materials for writing, is one reaſon why ſo many of the works of the ancients have periſhed, it accounts likewiſe for the ſmall number of manuſcripts of

any

any kind, previous to the eleventh century, when they began to multiply from a cauſe which ſhall be mentioned. Hiſt. Liter. de France, tom. vi. p. 6. Many circumſtances prove the ſcarcity of books during theſe ages. Private perſons ſeldom poſſeſſed any books whatever. Even monaſteries of conſiderable note had only one miſſal. Murat. Antiq. v. ix. p. 789. Lupus, abbot of Ferrieres, in a letter to the Pope, A. D. 855, beſeeches him to lend him a copy of Cicero de Oratore & Quintilian's Inſtitutions, " for," ſays he, " although we have parts of thoſe books, there is no complete copy of them in all France. Murat. Ant. v. iii. p. 835. The price of books became ſo high, that perſons of a moderate fortune could not afford to purchaſe them. The counteſs of Anjou paid for a copy of the Homilies of Haimon, biſhop of Halberſtadt, two hundred ſheep, five quarters of wheat, and the ſame quantity of rye and millet. Hiſtoire Literaire de France par des Religieux Benedictins, tom. vii. p. 3. Even ſo late as the year 1471, when Louis XI. borrowed the works of Raſis, the Arabian phyſician, from the faculty of medicine in Paris, he not only depoſited in pledge a conſiderable quantity of plate, but was obliged to procure a nobleman to join with him as ſurety in a deed, binding himſelf under a great forfeiture to reſtore it. Gabr. Naudè Addit. à l'hiſtoire de Louys XI. par Comines. edit. de Freſnoy, tom. iv. p. 281. Many curious circumſtances with reſpect to the extravagant price of books in the middle ages,

ages, are collected by that induftrious compiler, to whom I refer fuch of my readers as deem this fmall branch of literary hiftory an object of curiofity. When any perfon made a prefent of a book to a church or a monaftery, in which were the only libraries during thefe ages, it was deemed a donative of fuch value, that he offered it on the altar *pro remedio animæ fuæ*, in order to obtain the forgivenefs of his fins. Murat. vol. iii. p. 836. Hift. Liter. de France, tom. vi. p. 6. Nouv. Trait. du Diplomat. par deux Benedictins, 4to. tom. i. p. 481. In the eleventh century, the art of making paper in the manner now become univerfal, was invented; by means of that not only the number of manufcripts increafed, but the ftudy of the fciences was wonderfully facilitated. Murat. ib. p. 871. The invention of the art of making paper, and the invention of the art of printing, are two confiderable events in literary hiftory. It is remarkable that the former preceded the firft dawning of letters and improvement in knowledge towards the clofe of the eleventh century; the latter ufhered in the light which fpread over Europe at the æra of the Reformation.

NOTE XI. Sect. I. p. 23. [L].

All the religious maxims and practices of the dark ages are a proof of this. I fhall produce one remarkable teftimony in confirmation of it, from an author canonized by the church of Rome, St. Eloy or Egidius, bifhop of Noyon, in the feventh century.

century. "He is a good Christian who comes frequently to church; who presents the oblation which is offered to God upon the altar; who doth not taste of the fruits of his own industry until he has consecrated a part of them to God; who, when the holy festivals shall approach, lives chastely even with his own wife during several days, that with a safe conscience he may draw near to the altar of God; and who, in the last place, can repeat the Creed and the Lord's Prayer. Redeem then your souls from destruction while you have the means in your power; offer presents and tythes to churchmen; come more frequently to church; humbly implore the patronage of the saints; for if you observe these things, you may come with security in the day of retribution to the tribunal of the eternal Judge, and say, "Give to us, O Lord, for we have given unto thee." Dacherii Specilegium Vet. Script. v. ii. p. 94. The learned and judicious translator of Dr. Mosheim's Ecclesiastical History, from one of whose additional notes I have borrowed this passage, subjoins a very proper reflection; "We see here a large and ample description of a good Christian, in which there is not the least mention of the love of God, resignation to his will, obedience to his laws, or of justice, benevolence, and charity towards men." Mosh. Eccles. Hist. v. i. p. 324.

NOTE XII. SECT. I. p. 23. [M].

It is no inconsiderable misfortune to the church of Rome, whose doctrine of infallibility renders all such

ſuch inſtitutions and ceremonies as have been once univerſally received, immutable and everlaſting, that ſhe muſt continue to obſerve in enlightened times, thoſe rights which were introduced during the ages of darkneſs and credulity. What delighted and edified the latter, muſt diſguſt and ſhock the former. Many of theſe rites appear manifeſtly to have been introduced by a ſuperſtition of the loweſt and moſt illiberal ſpecies. Many of them were borrowed, with little variation, from the religious ceremonies eſtabliſhed among the ancient Heathens. Some were ſo ridiculous, that if every age did not furniſh inſtances of the faſcinating influence of ſuperſtition, as well as of the whimſical forms which it aſſumes, it muſt appear incredible that they ſhould ever be received or tolerated. In ſeveral churches of France, they celebrated a feſtival in commemoration of the Virgin Mary's flight into Egypt. It was called the feaſt of the Aſs. A young girl richly dreſſed, with a child in her arms, was ſet upon an aſs ſuperbly capariſoned. The aſs was led to the altar in ſolemn proceſſion. High Maſs was ſaid with great pomp. The aſs was taught to kneel at proper places; a hymn no leſs childiſh than impious was ſung in his praiſe: And when the ceremony was ended, the prieſt, inſtead of the uſual words with which he diſmiſſed the people, brayed three times like an aſs; and the people, inſtead of their uſual reſponſe, We bleſs the Lord, brayed three times in the ſame manner. Du Cange, voc. Feſtum. v. iii. p. 424. This ridiculous

diculous ceremony was not, like the feſtival of fools, and ſome other pageants of thoſe ages, a mere farcical entertainment exhibited in a church, and mingled, as was then the cuſtom, with an imitation of ſome religious rites; it was an act of devotion, performed by the miniſters of religion, and by the authority of the church. However, as this practice did not prevail univerſally in the Catholick church, its abſurdity contributed at laſt to aboliſh it.

NOTE XIII. Sect. I. p. 29. [N].

As there is no event in the hiſtory of mankind more ſingular than that of the Cruſades, every circumſtance that tends to explain or to give any rational account of this extraordinary frenzy of the human mind is intereſting. I have aſſerted in the text, that the minds of men were prepared gradually for the amazing effort which they made in conſequence of the exhortations of Peter the hermit, by ſeveral occurrences previous to his time. A more particular detail of this curious and obſcure part of hiſtory, may perhaps appear to ſome of my readers to be of importance. That the end of the world was expected about the cloſe of the tenth and beginning of the eleventh century; and that this occaſioned a general alarm, is evident from the authors to whom I refer in the text. This belief was ſo univerſal and ſo ſtrong, that it mingled itſelf with their civil tranſactions. Many charters, in the latter part of the tenth century, begin in this

this manner: "Apropinquante mundi termino," &c. As the end of the world is now at hand, and by various calamities and judgments the ſigns of its approach are now manifeſt. Hiſt. de Langued. par D. D. de Vic Vaiſette, tom. ii. Preuves. p. 86, 89, 90, 117, 158, &c. One effect of this opinion was, that a great number of pilgrims reſorted to Jeruſalem, with a reſolution to die there, or to wait the coming of the Lord; Kings, Earls, Marquiſſes, Biſhops, and even a great number of women, beſides perſons of inferior rank, flocked to the Holy Land. Glaber. Rodulph. Hiſt. chez Bouquet Recueil, tom. x. p. 50, 52. Another hiſtorian mentions a vaſt cavalcade of pilgrims who accompanied the count of Angouleme to Jeruſalem in the year 1026. Chronic. Ademari, ibid. p. 162. Theſe pilgrims filled Europe with lamentable accounts of the ſtate of Chriſtians in the Holy Land. Willerm. Tyr. Hiſt. ap. Geſt. Dei per Franc. vol. ii. p. 636. Guibert. Abbat. Hiſt. ibid. vol. i. p. 476. Beſides this, it was uſual for many of the Chriſtian inhabitants of Jeruſalem, as well as of other cities in the Eaſt, to travel as mendicants through Europe; and by deſcribing the wretched condition of the profeſſors of the Chriſtian faith under the dominion of Infidels, to extort charity, and to excite zealous perſons to make ſome attempt in order to deliver them from oppreſſion. Baldrici Archiepiſcopi Hiſtor. ap. Geſta Dei, &c. vol. i. p. 86. In the year 986, Gerbert, archbiſhop of Ravenna, afterwards Pope Silveſter II. addreſſed a letter to all Chriſtians

Christians in the name of the church of Jerusalem. It is eloquent and pathetic, and contains a formal exhortation to take arms against the Pagan oppressors, in order to rescue the holy city from their yoke. Gerberti Epistolæ ap. Bouquet, Recueil, tom. x. p. 426. In consequence of this spirited call, some subjects of the republick of Pisa equipped a fleet, and invaded the territories of the Mahometans in Syria. Murat. Script. Rer. Italic. vol. iii. p. 400. The alarm was taken in the East, and an opinion prevailed, A. D. 1010, that all the forces of Christendom were to unite, in order to drive the Mahometans out of Palestine. Chron. Ademari ap. Bouquet, tom. x. p. 152. It is evident from all these particulars, that the ideas which led the Crusaders to undertake their wild enterprize were gradually formed; so that the universal concourse to the standard of the cross when erected by Urban II. will appear less surprising.

If the various circumstances which I have enumerated in this note, as well as in the history, are sufficient to account for the ardour with which such vast numbers engaged in such a dangerous undertaking, the extensive privileges and immunities granted to those who assumed the cross, serve to account for the long continuance of this spirit in Europe. 1. They were exempted from prosecutions on account of debt during the time of their being engaged in this holy service. Du Cange, voc. *Crucis privilegium*, v. ii. p. 1194.—2. They were exempted from paying interest for the money which they had

borrowed. Ibid.—3. They were exempted either entirely, or at leaſt during a certain time, from the payment of taxes. Ibid. Ordonances des Rois de France, tom. i. p. 33.—4. They might alienate their lands without the conſent of the ſuperior lord of whom they held. Ib.—5. Their perſons and effects were taken under the protection of St. Peter, and the anathemas of the church were denounced againſt all who ſhould moleſt them, or carry on any quarrel or hoſtility againſt them, during their abſence, on account of the holy war. Du Cange, Ib. Guibertus Abbas ap. Bongarſ. i. p. 480, 482.—6. They enjoyed all the privileges of Eccleſiaſticks, and were not bound to plead in any civil court, but were declared ſubject to the ſpiritual juriſdiction alone. Du Cange, Ib. Ordon. des Rois, tom. i. p. 34, 174.—7. They obtained a plenary remiſſion of all their ſins, and the gates of heaven were ſet open to them, without requiring any proof of their penitence, but their engaging in this expedition, and thus gratifying their favourite paſſion, the love of war. Guibert. Abbas, p. 480. When we behold the civil and eccleſiaſtical powers vying with each other, and ſtraining their invention in order to deviſe expedients for encouraging and adding ſtrength to the ſpirit of ſuperſtition, can we be ſurpriſed that it ſhould become ſo general as to render it infamous, and a mark of cowardice to decline engaging in the holy war? Willierm Tyrienſis ap. Bongarſ. vol. ii. p. 641. The hiſtories of the Cruſades written by modern authors, who are

apt

apt to ſubſtitute the ideas and maxims of their own age in the place of thoſe which influenced the perſons whoſe actions they attempt to relate, convey a very imperfect notion of the ſpirit at that time predominant in Europe. The original hiſtorians, who were animated themſelves with the ſame paſſions which poſſeſſed their contemporaries, exhibit to us a more ſtriking picture of the times and manners which they deſcribe. The enthuſiaſtic rapture with which they account for the effects of the Pope's diſcourſe in the council of Clermont; the exultation with which they mention the numbers who devoted themſelves to this holy warfare; the confidence with which they rely on the divine protection; the extaſy of joy with which they deſcribe their taking poſſeſſion of the holy city, will enable us to conceive in ſome degree the extravagance of that zeal which agitated the minds of men with ſuch violence, and will ſuggeſt as many ſingular reflections to a philoſopher, as any occurrence in the hiſtory of mankind.—It is unneceſſary to ſelect the particular paſſages in the ſeveral hiſtorians which confirm this obſervation. But leſt theſe authors may be ſuſpected of adorning their narrative with any exaggerated deſcription, I ſhall appeal to one of the leaders who conducted the enterprize. There is extant a letter from Stephen, the earl of Chartres and Blois, to Adela his wife, in which he gives her an account of the progreſs of the Cruſaders. He deſcribes the Cruſaders as the choſen army of Chriſt, as the ſervants and ſol-

diers of God, as men who marched under the immediate protection of the Almighty, being conducted by his hand to victory and conqueſt. He ſpeaks of the Turks as accurſed, ſacrilegious, and devoted by heaven to deſtruction; and when he mentions the ſoldiers in the Chriſtian army who had died, or were killed, he is confident that their ſouls were admitted directly into the joys of Paradiſe. Dacherii Specilegium, vol. iv. p. 257.

The expence of conducting numerous bodies of men from Europe to Aſia, muſt have been exceſſive, and the difficulty of raiſing the neceſſary ſums muſt have been proportionally great, during ages when the publick revenues in every nation of Europe were extremely ſmall. Some account is preſerved of the expedients employed by Humbert II. Dauphin of Vienne, in order to levy the money requiſite towards equipping him for the Cruſade, A. D. 1346. Theſe I ſhall mention, as they tend to ſhew the conſiderable influence which the Cruſades had, both on the ſtate of property and of civil government. 1. He expoſed to ſale part of his domains; and as the price was deſtined for ſuch a ſacred ſervice, he obtained the conſent of the French King, of whom theſe lands were held, ratifying the alienation. Hiſt. de Dauphinè, tom. i. p. 332. 335.—2. He iſſued a proclamation, in which he promiſed to grant new privileges to the nobles, as well as new immunities to the cities and towns, in his territories, in conſideration of

certain

certain ſums which they were inſtantly to pay on that account. Ibid. tom. ii. p. 512. Many of the charters of community, which I ſhall mention in another note, were obtained in this manner.—3. He exacted a contribution towards defraying the charges of the expedition from all his ſubjects, whether eccleſiaſticks or laymen, who did not accompany him in perſon to the Eaſt. Ibid. tom. i. p. 335.—4. He appropriated a conſiderable part of his uſual revenues for the ſupport of the troops to be employed in this ſervice. Ibid. tom. ii. p. 518.—5. He exacted conſiderable ſums not only of the Jews ſettled in his dominions, but alſo of the Lombards and other bankers who had fixed their reſidence there. Ibid. tom. i. p. 338. tom. ii. 528. Notwithſtanding the variety of theſe reſources, the Dauphin was involved in ſuch expence by this expedition, that on his return he was obliged to make new demands on his ſubjects, and to pillage the Jews by freſh exactions. Ibid. tom. i. p. 344, 347. When the count de Foix engaged in the firſt Cruſade, he raiſed the money neceſſary for defraying the expences of that expedition, by alienating part of his territories. Hiſt. de Langued. par D. D. de Vic & Vaiſette, tom. ii. p. 287. In like manner Baldwin, count of Hainaut, mortgaged or ſold part of his dominions to the biſhop of Liege. A. D. 1096. Du Mont Corps Diplomatique, tom. i. p. 59. At a later period, Baldwin Count of Namur ſold part of his eſtate to a monaſtery, when he intended to aſſume the croſs. A. D. 1239. Miræi Oper. i. 313.

NOTE XIV. Sect. I. p. 34. [O].

The uſual method of forming an opinion concerning the comparative ſtate of manners in two different nations, is by attending to the facts which hiſtorians relate concerning each of them. Various paſſages might be ſelected from the Byzantin hiſtorians, deſcribing the ſplendor and magnificence of the Greek Empire. P. de Montfaucon has produced from the writings of St. Chryſoſtom a very full account of the elegance and luxury of the Greeks in his age. That father in his ſermons enters into ſuch details concerning the manners and cuſtoms of his contemporaries, as appear ſtrange in diſcourſes from the pulpit. P. de Montfaucon has collected theſe deſcriptions, and ranged them under different heads. The court of the more early Greek Emperors ſeems to have reſembled thoſe of Eaſtern monarchs, both in magnificence and in corruption of manners. The Emperors in the eleventh century, though inferior in power, did not yield to them in oſtentation and ſplendor. Memoires de l'Acad. des Inſcript. tom. xx. p. 197.——But we may decide concerning the comparative ſtate of manners in the Eaſtern Empire, and among the nations in the weſt of Europe by another method, which, if not more certain, is at leaſt more ſtriking. As Conſtantinople was the place of rendezvous for all the armies of the cruſaders, this brought together the people of the eaſt and weſt as to one great interview. There are extant ſeveral contemporary

temporary authors, both among the Greeks and Latins, who were witneſſes of this ſingular congreſs of people, formerly ſtrangers, in a great meaſure, to each other. They deſcribe with ſimplicity and candour, the impreſſion which that new ſpectacle made upon their own minds. This may be conſidered as the moſt lively and juſt picture of the real character and manners of each people. When the Greeks ſpeak of the Franks, they deſcribe them as barbarians, fierce, illiterate, impetuous and ſavage. They aſſume a tone of ſuperiority, as a more poliſhed people, acquainted with the arts both of government and of elegance, of which the other were ignorant. It is thus Anna Comnena deſcribes the manners of the Latins, Alexias, p. 224. 231. 237. ap. Byz. Script. vol. xi. She always treats them with contempt as a rude people, the very mention of whoſe names was ſufficient to contaminate the beauty and elegance of hiſtory, p. 229. Nicetas Choniatas inveighs againſt them with ſtill more violence, and gives an account of their ferocity and devaſtations, in terms not unlike thoſe which preceding hiſtorians had employed in deſcribing the incurſions of the Goths and Vandals. Nicet. Chon. ap. Byz. Script. vol. iii. p. 302, &c. But, on the other hand, the Latin hiſtorians were ſtruck with aſtoniſhment at the magnificence, wealth, and elegance which they diſcovered in the Eaſtern Empire. "O what a vaſt city is Conſtantinople (exclaims Fulcherius Carnotenſis, when he firſt

beheld it) and how beautiful! How many monasteries are there in it, and how many palaces built with wonderful art! How many manufactures are there in the city amazing to behold! It would be astonishing to relate how it abounds with all good things, with gold, silver, and stuffs of various kinds; for every hour ships arrive in its port laden with all things necessary for the use of man." Fulcher, ap. Bongars. vol. i. p. 386. Willermus Archbishop of Tyre, the most intelligent historian of the crusades, takes frequent occasion to describe the elegance and splendour of the court of Constantinople, and adds, that what they observed there exceeded any idea which they could have formed of it, nostrarum enim rerum modum & dignitatem excedunt, Willerm. Tyr. ap. Bong. vol. ii. p. 657. 664. Benjamin the Jew, of Tudela in Navarre, who began his travels A. D. 1173, appears to have been equally astonished at the magnificence of that city, and gives a description of its splendour, in terms of high admiration. Benj. Tudel. chez les Voyages faits en 12, 13, &c. siecles par Bergeron, p. 10. &c. Guntherus, a French monk who wrote a history of the conquest of Constantinople by the crusaders in the thirteenth century, speaks of the magnificence of that city in the same tone of admiration, "Structuram autem Ædificiorum in corpore civitatis, in ecclesiis videlicet, & turribus, & in domibus magnatorum, vix ullus vel describere potest, vel credere describenti, nisi qui ea oculata fide cognoverit."

cognoverit." Hist. Constantinop. ap. Canisii Lectiones Antiquas. fol. Antw. 1725. vol. iv. p. 14. Geoffrey de Villehardouin, a nobleman of high rank, and accustomed to all the magnificence then known in the west, describes, in similar terms, the astonishment and admiration of such of his fellow-soldiers who beheld Constantinople for the first time: "They could not have believed, says he, that there was a city so beautiful and rich in the whole world. When they viewed its high walls, its lofty towers, its rich palaces, its superb churches, all appeared so great that they could have formed no conception of this sovereign city, unless they had seen it with their own eyes." Histoire de la Conquete de Constant. p. 49. From these undisguised representations of their own feelings, it is evident, that to the Greeks, the Latins appeared to be a race of rude, unpolished barbarians; whereas the latter, how much soever they might contemn the unwarlike character of the former, could not help regarding them as far superior to themselves in elegance and arts.—That the state of government and manners was much more improved in Italy than in the other countries of Europe is evident not only from the facts recorded in history, but it appears that the more intelligent leaders of the crusaders were struck with the difference. Jacobus de Vitriaco, a French historian of the holy war, makes an elaborate panegyrick on the character and manners of the Italians. He views them as a more polished

people, and particularly celebrates them for their love of liberty, and civil wiſdom; "in conſiliis circumſpecti, in re ſua publica procuranda diligentes & ſtudioſi; ſibi in poſterum providentes; aliis ſubjici renuentes; ante omnia libertatem ſibi defendentes; ſub uno quem eligunt capitaneo, communitati ſuæ jura & inſtituta dictantes, & ſimiliter obſervantes." Hiſtor. Hieroſol. ap. Geſta Dei per Francos, vol. ii. p. 1085.

NOTE XV. Sect. I. p. 38. [P].

The different ſteps taken by the cities of Italy in order to extend their power and dominion are remarkable. As ſoon as their liberties were eſtabliſhed, and they began to feel their own importance, they endeavoured to render themſelves maſters of the territory round their walls. Under the Romans, when cities enjoyed municipal privileges and juriſdiction, the circumjacent lands belonged to each town, and were the property of the community. But as it was not the genius of the feudal policy to encourage cities, or to ſhew any regard for their poſſeſſions and immunities, theſe lands had been ſeized, and ſhared among the conquerors. The barons to whom they were granted, erected their caſtles almoſt at the gates of the city, and exerciſed their juriſdiction there. Under pretence of recovering their ancient property, many of the cities in Italy attacked theſe troubleſome neighbours, and diſpoſſeſſing them, annexed their territories to the communities, and made

made thereby a confiderable addition to their power. Several inftances of this occur in the eleventh, and beginning of the twelfth centuries. Murat. antiq. Ital. vol. iv. p. 159, &c. Their ambition increafing together with their power, the cities afterwards attacked feveral barons fituated at a greater diftance from them, and obliged thefe to engage that they fhould become members of their community; that they fhould take the oath of fidelity to their magiftrates; that they fhould fubject their lands to all burdens and taxes impofed by common confent; that they fhould defend the community againft all its enemies; and that they fhould refide within the city during a certain fpecified time in each year. Murat. ibid. 163. This fubjection of the nobility to the municipal government eftablifhed in cities, became almoft univerfal, and was often extremely grievous to perfons accuftomed to confider themfelves as independent. Otto Frifingenfis thus defcribes the ftate of Italy under Frederick I. " The cities fo much affect liberty, and are fo folicitous to avoid the infolence of power, that almoft all of them have thrown off every other authority, and are governed by their own magiftrates. Infomuch that all that country is now filled with free cities, each of which have compelled their bifhops to refide within their walls, and there is fcarcely any nobleman, how great foever his power may be, who is not fubject to the laws and government of fome city. De Geftis Frider. I. Imp. lib. ii. c. 13. p. 453. In another place he obferves of the

the Marquis of Montſerrat that he was almoſt the only Italian baron, who had preſerved his independence, and had not become ſubject to the laws of any city. See alſo Muratori Antichita Eſtenſi, vol. i. p. 411, 412. That ſtate into which ſome of the nobles were compelled to enter, others embraced from choice. They obſerved that high degree of ſecurity as well as of credit and eſtimation which the growing wealth and dominion of the great communities procured to all the members of them. They were deſirous to partake of theſe, and to put themſelves under ſuch powerful protection. With this view they voluntarily became citizens of the towns to which their lands were moſt contiguous, and abandoning their ancient caſtles, took up their reſidence in the cities at leaſt during part of the year. Several deeds are ſtill extant, by which ſome of the moſt illuſtrious families in Italy are aſſociated as citizens of different cities. Murat. ib. p. 165, &c. A charter by which Atto de Macerata is admitted as a citizen of Oſimo, A. D. 1198. in the Marcha di Ancona is ſtill extant. In this he ſtipulates, that he will acknowledge himſelf to be a burgeſs of that community; that he will to the utmoſt of his power promote its honour and welfare; that he will obey its magiſtrates; that he will enter into no league with its enemies; that he will reſide in the town during two months in every year, or for a longer time if required by the magiſtrates. The community on the other hand take him, his family and friends, under their protection, and engage

engage to defend him againſt every enemy. Fr. Ant. Zacharias Anecdota medii ævi. Aug. Taurm. 1755. fol. p. 66. This privilege was deemed ſo important, that not only laymen, but eccleſiaſticks of the higheſt rank, condeſcended to be adopted as members of the great communities, in hopes of enjoying the ſafety and dignity which that conferred. Murat. ib. 179. Before the inſtitution of communities, perſons of noble birth had no other reſidence but their caſtles. They kept their petty courts there; and the cities were deſerted, having hardly any inhabitants but ſlaves or perſons of low condition. But in conſequence of the practice which I have mentioned, cities not only became more populous, but were filled with inhabitants of better rank, and a cuſtom which ſtill ſubſiſts in Italy was then introduced, that all families of diſtinction reſide more conſtantly in the great towns, than is uſual in other parts of Europe. As cities acquired new conſideration and dignity by the acceſſion of ſuch citizens, they became more ſolicitous to preſerve their liberty and independence. The Emperors, as ſovereigns, had anciently a palace in almoſt every great city of Italy; when they viſited that country they were accuſtomed to reſide in theſe, and the troops which accompanied them were quartered in the houſes of the citizens. This the citizens deemed both ignominious and dangerous. They could not help conſidering it as receiving a maſter and an enemy within their walls. They laboured therefore to get free of this ſubjection. Some cities prevailed

prevailed on the Emperors to engage that they ſhould never enter their gates, but take up their reſidence without the walls: Chart. Hen. IV. Murat. ib. p. 24. Others obtained the Imperial licence to pull down the palace ſituated within their liberties, on condition that they built another in the ſuburbs for the reception of the Emperor. Chart. Hen. IV. Murat. ib. p. 25. Theſe various encroachments of the Italian cities alarmed the Emperors, and put them on ſchemes for re-eſtabliſhing the Imperial juriſdiction over them on its ancient footing. Frederick Barbaroſſa engaged in this enterprize with great ardour. The free cities of Italy joined together in a general league, and ſtood on their defence; and after a long conteſt, carried on with alternate ſucceſs, a ſolemn treaty of peace was concluded at Conſtance, A. D. 1183. by which all the privileges and immunities granted by former Emperors to the principal cities in Italy were confirmed and ratified. Murat. diſſert. XLVIII. This treaty of Conſtance was conſidered as ſuch an important article in the juriſprudence of the middle ages, that it is uſually publiſhed together with the Libri Feudorum at the end of the Corpus Juris Civilis. The treaty ſecured privileges of great importance to the confederate cities, and though it reſerved a conſiderable degree of authority and juriſdiction to the Empire, yet the cities perſevered with ſuch vigour in their efforts in order to extend their immunities, and the conjunctures in which they made them were ſo favourable, that, before the concluſion

of

of the thirteenth century, moſt of the great cities in Italy had ſhaken off all marks of ſubjection to the Empire, and were become independent ſovereign republicks. It is not requiſite that I ſhould trace the various ſteps by which they advanced to this high degree of power ſo fatal to the Empire, and ſo beneficial to the cauſe of liberty in Italy. Muratori with his uſual induſtry has collected many original papers which illuſtrate this curious and little known part of hiſtory. Murat. Antiq. Ital. Diſſert. L. See alſo Jo. Bapt. Villanovæ hiſt. Laudis Pompeii ſive Lodi in Græv. Theſ. Antiquit. Ital. vol. iii. p. 888.

NOTE XVI. Sect. I. p. 40. [Q].

Long before the inſtitution of communities in France, charters of immunity or Franchiſe were granted to ſome towns and villages by the Lords on whom they depended. But theſe are very different from ſuch as became common in the twelfth and thirteenth centuries. They did not erect theſe towns into corporations; they did not eſtabliſh a municipal government; they did not grant them the privilege of bearing arms. They contained nothing more than a manumiſſion of the inhabitants from the yoke of ſervitude; an exemption from certain ſervices which were oppreſſive and ignominious; and the eſtabliſhment of a fixed tax or rent which they were to pay to their Lord in place of impoſitions which he could formerly lay upon them at pleaſure. Two charters of this kind

kind to two villages in the county of Rousillon, one A. D. 974. the other A. D. 1025, are still extant. Petr. de Marca *Marca*, sive limes Hispanicus. app. p. 909. 1038. Such concessions, it is probable, were not unknown in other parts of Europe, and may be considered as a step towards the more extensive privileges conferred by Louis the Gross on the towns within his domains. The communities in France never aspired to the same independence with those in Italy. They acquired new privileges and immunities, but the right of sovereignty remained entire to the King or baron within whose territories the respective cities were situated, and from whom they received the charter of their freedom. A great number of these charters granted both by the Kings of France, and by their great vassals, are published by M. D'Achery in his Specilegium, and many are found in the collection of the Ordonances des Rois de France. These convey a very striking representation of the wretched condition of cities previous to the institution of communities, when they were subject to the judges appointed by the superior Lords of whom they held, and had scarcely any other law but their will. Each concession in these charters must be considered as a grant of some new privilege which the people did not formerly enjoy, and each regulation as a method of redressing some grievance under which they formerly laboured. The charters of communities contain likewise the first expedients employed for the introduction of

equal

equal laws, and regular government. On both theſe accounts they merit particular attention, and therefore, inſtead of referring my readers to the many bulky volumes in which they are ſcattered, I ſhall give them a view of ſome of the moſt important articles in theſe charters, ranged under two general heads. I. Such as reſpect perſonal ſafety. II. Such as reſpect the ſecurity of property.

I. DURING that ſtate of turbulence and diſorder which the corruption of the feudal government introduced into Europe, perſonal ſafety was the chief object of every individual; and as the great military barons alone were able to give ſufficient protection to their vaſſals, this was one great ſource of their power and authority. But, by the inſtitution of communities, effectual proviſion was made for the ſafety of individuals independent of the nobles. For, 1. the fundamental article in every charter was, that all the members of it bound themſelves by oath to aſſiſt, defend, and ſtand by each other againſt all aggreſſors, and that they ſhould not ſuffer any perſon to injure, diſtreſs, or moleſt, any of their fellow-citizens. D'Acher. Spicel. x. 642. xi. 341, &c.—2. Whoever reſided in any town which was made free, was obliged under a ſevere penalty to accede to the community, and to take part in the mutual defence of its members. D'Acher. Spic. xi. 344. —3. The communities had the privilege of carrying arms; of making war on their private enemies;

mies; and of executing by military force any ſentence which their magiſtrates pronounced. D'Ach. Spicel. x. 643, 644. xi. 343.—4. The practice of making ſatisfaction by a pecuniary compenſation for murder, aſſault, or other acts of violence, moſt inconſiſtent with the order of ſociety, and the ſafety of individuals, was aboliſhed; and ſuch as committed theſe crimes were puniſhed capitally, or with rigour adequate to their guilt. D'Ach. xi. 362. Miræi opera Diplomatica, i. 292. —5. No member of a community was bound to juſtify or defend himſelf by battle, or combat, but if he was charged with any crime, he could be convicted only by the evidence of witneſſes, and the regular courſe of legal proceedings. Miræus, ibid. D'Ach. xi. 375, 349. Ordon. tom. iii. 265.—6. If any man ſuſpected himſelf to be in danger from the malice or enmity of another, upon his making oath to that effect before a magiſtrate, the perſon ſuſpected was bound under a ſevere penalty to give ſecurity for his peaceable behaviour. D'Ach. xi. 346. This is the ſame ſpecies of ſecurity which is ſtill known in Scotland under the name of *Lawburrows*. In France it was firſt introduced among the inhabitants of communities, and having been found to contribute conſiderably towards perſonal ſafety, it was extended to all the other members of the ſociety. Eſtabliſſemens de St. Louis, liv. i. cap. 28. ap. Du Cange vie de St. Louis, p. 15.

II. The provisions in the charters of communities concerning the security of property, are not less considerable than those respecting personal safety. By the ancient law of France, no person could be arrested or confined in prison on account of any private debt. Ordon. des Rois de France, tom. i. p. 72, 80. If any person was arrested upon any pretext, but his having been guilty of a capital crime, it was lawful to rescue him out of the hands of the officers who had seized him. Ordon. iii. p. 17. Freedom from arrest on account of debt, seems likewise to have been enjoyed in other countries. Gudenus Sylloge Diplom. 473. In society, while it remained in its rudest and most simple form, debt seems to have been considered as an obligation merely personal. Men had made some progress towards refinement, before creditors acquired a right of seizing the property of their debtors in order to recover payment. The expedients for this pupose were all introduced originally in communities, and we can trace the gradual progress of them. 1. The simplest and most obvious species of security was, that the person who sold any commodity should receive a pledge from him who bought it, which he restored upon receiving payment. Of this custom there are vestiges in several charters of community. D'Ach. ix. 185. xi. 377.—2. When no pledge was given, and the debtor became refractory or insolvent, the creditor was allowed to seize his effects with a strong hand, and by his private authority; the citizens of Paris are warranted by the royal mandate, " ut ubicum-

que, et quocumque modo poterunt, tantum capiant, unde pecuniam ſibi debitam integrè & plenariè habeant, & inde ſibi invicem adjutores exiſtant." Ordon, &c. tom. i. p. 6. This rude practice, ſuitable only to the violence of a ſtate of nature, was tolerated longer than one can conceive to be poſſible in any ſociety where laws and order were at all known. The ordonance authorizing it was iſſued, A. D. 1134; and that which corrects the law, and prohibits creditors from ſeizing the effects of their debtors, unleſs by a warrant from a magiſtrate, and under his inſpection, was not publiſhed until the year 1351. Ordon. tom. ii. 438. It is probable, however, that men were taught, by obſerving the diſorders which the former mode of proceeding occaſioned, to correct it in practice long before a remedy was provided by a law to that effect. Every diſcerning reader will apply this obſervation to many other cuſtoms and practices which I have mentioned. New cuſtoms are not always to be aſcribed to the laws which authorize them. Theſe ſtatutes only give a legal ſanction to ſuch things as the experience of mankind has previouſly found to be proper and beneficial.—3. As ſoon as the interpoſition of the magiſtrate became requiſite, regular proviſion was made for attaching or diſtraining the moveable effects of a debtor; and if his moveables were not ſufficient to diſcharge the debt, his immoveable property, or eſtate in land, was liable to the ſame diſtreſs, and was ſold for the benefit of his creditor. D'Ach. ix. p. 184, 185.

185. xi. p. 348. 380. As this regulation afforded the moſt compleat ſecurity to the creditor, it was conſidered as ſo ſevere, that humanity pointed out ſeveral limitations in the execution of it. Creditors were prohibited from ſeizing the wearing apparel of their debtors, their beds, the door of their houſe, their inſtruments of huſbandry, &c. D'Ach. ix. 184. xi. 377. Upon the ſame principles, when the power of diſtraining effects became more general, the horſe and arms of a gentleman could not be ſeized. D'Ach. ix. 185. As hunting was the favourite amuſement of martial nobles, the Emperor Lodovicus Pius prohibited the ſeizing of a hawk on account of any compoſition or debt. Capitul. lib. iv. § 21. But if the debtor had no other moveables, even theſe privileged articles might be ſeized.—4. In order to render the ſecurity of property compleat within a community, every perſon who was admitted a member of it, was obliged to buy or build a houſe, or to purchaſe lands, within its precincts, or at leaſt to bring into the town a conſiderable portion of his moveables *per quæ juſtitiari poſſit, ſi quid fortè in eum querelæ evenerit*. D'Ach. xi. 326. Ordon. i. 367. Libertates S. Georgii de Eſperanchia. Hiſt. de Dauphine, tom. i. p. 26.—5. That ſecurity might be as perfect as poſſible, in ſome towns, the members of the community ſeem to have been bound for each other. D'Ach. x. 644.—6. All queſtions with reſpect to property were tried within the community, by magiſtrates and judges which the citizens elected or appointed. Their deciſions were

more equal and fixed than the ſentences which depended on the capricious and arbitrary will of a baron, who thought himſelf ſuperior to all laws. D'Ach. x. 644, 646. xi. 344. & paſſim. Ordon. iii. 204.—7. No member of a community could be burdened by any arbitrary tax; for the ſuperior lord who granted the charter of community, accepted of a fixed cenſus or duty in lieu of all demands. Ordon. t. iii. 204. Libertates de Calma. Hiſt. de Dauphine, tom. i. p. 19. Libert. St. Georgii de Eſperanchia, ibid. p. 26. Nor could the members of a community be diſtreſſed by an unequal impoſition of the ſum to be levied on the community. Regulations are inſerted in the charters of ſome communities concerning the method of determining the quota of any tax to be levied on each inhabitant. D'Ach. xi. 350, 365. St. Louis publiſhed an ordonance concerning this matter, which extended to all the communities. Ordon. t. i. 186. Theſe regulations are extremely favourable to liberty, as they veſt the power of proportioning the taxes in a certain number of citizens choſen out of each pariſh, who were bound by ſolemn oath to decide according to juſtice.—That the more perfect ſecurity of property was one great object of thoſe who inſtituted communities, we learn, not only from the nature of the thing, but from the expreſs words of ſeveral charters, of which I ſhall only mention that granted by Alienor, Queen of England and Dutcheſs of Guienne, to the community of Poitiers, " ut ſua propria melius defendere poſſint, & magis integrè cuſtodire." Du Cange

voc.

voc. *Communia*, v. ii. p. 863.—Such are ſome of the capital regulations eſtabliſhed in communities during the twelfth and thirteenth centuries. Theſe may be conſidered as the firſt rudiments of law and order, and contributed greatly to introduce regular government among all the members of ſociety. As ſoon as communities were inſtituted, high ſentiments of liberty began to appear. When Humbert, lord of Beaujeu, upon granting a charter of community to the town of Belleville, exacted of the inhabitants an oath of fidelity to himſelf and ſucceſſors, they ſtipulated, on their part, that he ſhould ſwear to maintain their franchiſes and liberties; and for their greater ſecurity, they obliged him to bring twenty gentlemen to take the ſame oath, and to be bound together with him. D'Ach. ix. 183. In the ſame manner the lord of Moirens in Dauphinè produced a certain number of perſons as his ſureties for the obſervation of the articles contained in the charter of community to that town. Theſe were bound to ſurrender themſelves priſoners to the inhabitants of Moirens, if their liege lord ſhould violate any of their franchiſes, and they promiſed to remain in cuſtody until he ſhould grant them redreſs. Hiſt. de Dauphinè, tom. i. p. 17. If the mayor or chief magiſtrate of a town did any injury to a citizen, he was obliged to give ſecurity for his appearance in judgment in the ſame manner as a private perſon; and if caſt, was liable to the ſame penalty. D'Ach. ix. 183. Theſe are ideas of equality uncommon in the feudal times. Communities were ſo favour-

able to freedom, that they were diſtinguiſhed by the name of *Libertates*. Du Cange, v. ii. p. 863. They were at firſt extremely odious to the nobles, who foreſaw what a check they muſt prove to their power and domination. Guibert Abbot of Nogent calls them execrable inventions, by which, contrary to law and juſtice, ſlaves withdrew themſelves from that obedience which they owed to their maſters. Du Cange, ib. 862. The zeal with which ſome of the nobles and powerful eccleſiaſticks oppoſed the eſtabliſhment of communities, and endeavoured to circumſcribe their privileges, was extraordinary. A ſtriking inſtance of this occurs in the conteſts between the archbiſhop of Reims, and the inhabitants of that community. It was the chief buſineſs of every archbiſhop, during a conſiderable time, to abridge the rights and juriſdiction of the community; and the great object of the citizens, eſpecially when the ſee was vacant, to maintain, to recover, and to extend their own juriſdiction. Hiſtoire civile & politique de la ville de Reims par M. Anquetil, tom. i. p. 287, &c.

The obſervations which I have made concerning the ſtate of cities, and the condition of their inhabitants, are confirmed by innumerable paſſages in the hiſtorians and laws of the middle ages. It is not improbable, however, that ſome cities of the firſt order were in a better ſtate, and enjoyed a ſuperior degree of liberty. Under the Roman government, the municipal government eſtabliſhed in cities was extremely favourable to liberty. The juriſdiction

jurisdiction of the senate in each corporation, and the privileges of the citizens, were both extensive. There is reason to believe, that some of the greater cities which escaped the destructive rage of the barbarous nations, still retained their ancient form of government, at least in a great measure. They were governed by a council of citizens, and by magistrates whom they themselves elected. Very strong presumptions in favour of this opinion, are produced by M. l'Abbé De Bos. Hist. Crit. de la Mon. Franc. tom. i. p. 18, &c. tom. ii. p. 524. edit. 1742. It appears from some of the charters of community to cities, granted in the twelfth and thirteenth centuries, that these only confirm the privileges possessed by the inhabitants previous to the establishment of the community. D'Acher. Specileg. vol. xi. p. 345. Other cities claimed their privileges as having possessed them without interruption from the times of the Romans. Hist. Crit. de la Mon. Franc. tom. ii. p. 333. But the number of cities which enjoyed such immunities was so small, as in no degree to diminish the force of my conclusions in the text.

NOTE XVII. Sect. I. p. 40. [R].

Having given a full account of the establishment as well as effects of communities in Italy and France, it will be necessary to enquire with some attention into the progress of cities and of municipal government in Germany. The ancient Germans had no cities. Even in their hamlets or vil-

lages they did not build their houſes contiguous to each other. Tac. de Mor. Germ. cap. 16. They conſidered it as a badge of ſervitude to be obliged to dwell in a city ſurrounded with walls. When one of their tribes had ſhaken off the Roman yoke, their countrymen required of them, as an evidence of their having recovered liberty, to demoliſh the walls of a town which the Romans had built in their country. Even the fierceſt animals, ſaid they, loſe their ſpirit and courage when they are confined. Tac. Hiſtor. lib. iv. c. 64. The Romans built ſeveral cities of note on the banks of the Rhine. But in all the vaſt countries from that river to the coaſts of the Baltick, there was hardly one city previous to the ninth century of the Chriſtian æra. Conringius Exercitatio de Urbibus Germaniæ Oper. vol. i. § 25, 27, 31, &c. Heineccius differs from Conringius with reſpect to this. But even after allowing to his arguments and authorities their utmoſt force, they prove only that there were a few places in thoſe extenſive regions on which ſome hiſtorians have beſtowed the name of towns. Elem. Jur. German. lib. i. § 102. Under Charlemagne, and the Emperors of his family, as the political ſtate of Germany began to improve, ſeveral cities were founded, and men became accuſtomed to aſſociate and to live together in one place. Charlemagne founded two archbiſhopricks and nine biſhopricks in the moſt conſiderable towns of Germany. Aub. Miræi Opera Diplomatica, vol. i. p. 16. His ſucceſſors increaſed the number of theſe; and as biſhops fixed their reſidence

dence in these cities, and performed religious functions there, that induced many people to settle in them. Conring. ibid. § 48. But Henry, sirnamed the Fowler, who began his reign A. D. 920, must be considered as the great founder of cities in Germany. The Empire was at that time infested by the incursions of the Hungarians and other barbarous people. In order to oppose them, Henry encouraged his subjects to settle in cities which he surrounded with walls and towers. He enjoined or persuaded a certain proportion of the nobility to fix their residence in the towns, and thus rendered the condition of citizens more honourable than it had been formerly. Wittikindus Annal. lib. i. ap. Conring. § 82. From this period the number of cities continued to increase, and they became more populous and more wealthy. But cities were still destitute of municipal liberty or jurisdiction. Such of them as were situated in the Imperial demesnes, were subject to the Emperors. Their *Comites*, *Missi*, and other judges presided in them, and dispensed justice. Towns situated on the estate of a baron, were part of his fief, and he or his officers exercised a similar jurisdiction in them. Conring. ibid. § 73, 74. Heinec. Elem. Jur. Germ. lib. i. § 104. The Germans borrowed the institution of communities from the Italians. Knipschildius Tractatus Politico. Histor. Jurid. de Civitatum Imperialium Juribus, vol. i. lib. i. cap. 5. N°. 23. Frederick Barbarossa was the first Emperor who, from the same political considera-

tion that influenced Lewis the Groſs, multiplied communities in order to abridge the power of the nobles. Pfeffel Abregè de l'Hiſtoire & du Droit Publique d'Allemagne, 4to. p. 297. From the reign of Henry the Fowler, to the time when the German cities acquired full poſſeſſion of their immunities, various circumſtances contributed to their increaſe. The eſtabliſhment of biſhopricks (already mentioned) and the building of cathedrals, naturally induced many people to ſettle there. It became the cuſtom to hold councils and courts of judicature of every kind, eccleſiaſtical as well as civil, in cities. In the eleventh century, many ſlaves were enfranchiſed, the greater part of which ſettled in cities. Several mines were diſcovered and wrought in different provinces, which drew together ſuch a concourſe of people, as gave riſe to ſeveral cities. Conring. § 105. The cities began in the thirteenth century to form leagues for their mutual defence, and for repreſſing the diſorders occaſioned by the private wars among the barons, as well as by their exactions. This rendered the condition of the inhabitants of cities more ſecure than that of any order of men, and allured many to become members of their communities. Conring. § 94. There were inhabitants of three different ranks in the towns of Germany. The nobles, or familiæ, the citizens, or liberi, and the artiſans, who were ſlaves, or homines proprii. Knipſchild. lib. ii. cap. 29. N°. 13. Henry V. who began his reign A. D. 1106, infranchiſed the ſlaves who were artiſans or inhabitants in ſeveral towns,

towns, and gave them the rank of citizens, or liberi. Pfeffel, p. 254. Knipſch. lib. ii. c. 29. N°. 113, 119. Though the cities in Germany did not acquire liberty ſo early as thoſe in France, they extended their privileges much farther. All the Imperial and free cities, the number of which is conſiderable, acquired the full right of being *immediate*; by which term, in the German juriſprudence, we are to underſtand, that they are ſubject to the Empire alone, and poſſeſs within their own precincts all the rights of compleat and independent ſovereignty. The various privileges of the Imperial cities, the great guardians of the Germanic liberties, are enumerated by Knipſchild, lib. ii. The moſt important articles are generally known, and it would be improper to enter into any diſquiſition concerning minute particulars.

NOTE XVIII. Sect. I. p. 40. [S].

The Spaniſh hiſtorians are almoſt entirely ſilent concerning the origin and progreſs of communities in that kingdom; ſo that I cannot fix with any degree of certainty the time and manner of their firſt introduction there. It appears, however, from Mariana, vol. ii. p. 221, fol. Hagæ 1736, that in the year 1350, eighteen cities had obtained a ſeat in the Cortes of Caſtile. From the account which ſhall be given of their conſtitution and pretenſions, Sect. III. of this volume, it is evident that their privileges and form of government were the ſame with thoſe of the other feudal corporations; and this, as well as the perfect ſimiliarity of

of political inſtitutions and tranſactions in all the feudal kingdoms, may lead us to conclude, that communities were introduced there in the ſame manner, and probably about the ſame time, as in the other nations of Europe. In Aragon, as I ſhall have occaſion to obſerve in a ſubſequent note, cities ſeem early to have acquired extenſive immunities, together with a ſhare in the legiſlature. In the year 1118, the citizens of Saragoſſa had not only attained political liberty, but they were declared to be of equal rank with the nobles of the ſecond claſs; and many other immunities, unknown to perſons in their rank of life in other parts of Europe, were conferred upon them. Zurita Anales de Aragon, tom. i. p. 44. In England, the eſtabliſhment of communities or corporations was poſterior to the Conqueſt. The practice was borrowed from France, and the privileges granted by the crown were perfectly ſimilar to thoſe which I have enumerated. But as this part of hiſtory is well known to moſt of my readers, I ſhall, without entering into any critical or minute diſcuſſion, refer them to authors who have fully illuſtrated this intereſting point in the Engliſh hiſtory. Brady's Treatiſe of Boroughs. Madox Firma Burgi, chap. i. ſect. ix. Hume's Hiſtory of England, vol. i. append. i. and ii. It is not improbable that ſome of the towns in England were formed into corporations under the Saxon Kings, and that the charters granted by the Kings of the Norman race were not charters of enfranchiſement from a ſtate of ſlavery, but a confirma-

tion

tion of privileges which they already enjoyed. See Lord Lyttelton's Hiſtory of Henry II. vol. ii. p. 317. The Engliſh cities, however, were very inconſiderable in the twelfth century. A clear proof of this occurs in the hiſtory to which I laſt referred. Fitzſtephen, a contemporary author, gives a deſcription of the city of London in the reign of Henry II. and the terms in which he ſpeaks of its trade, its wealth, and the ſplendour of its inhabitants, would ſuggeſt no inadequate idea of its ſtate at preſent, when it is the greateſt and moſt opulent city of Europe. But all ideas of grandeur and magnificence are merely comparative. It appears from a contemporary author, Peter of Blois, archdeacon of London, who had good opportunity of being well informed, that this city, of which Fitzſtephen gives ſuch a pompous account, contained no more than forty thouſand inhabitants. Ibid. 315, 316. The other cities were ſmall in proportion, and in no condition to extort any extenſive privileges. That the conſtitution of the boroughs in Scotland, in many circumſtances, reſembled that of the towns in France and England, is manifeſt from the Leges Burgorum annexed to the Regiam Majeſtatem.

NOTE XIX. Sect. I. p. 46. [T].

Soon after the introduction of the third eſtate into the national council, the ſpirit of liberty which that excited in France began to produce conſpicuous effects. In ſeveral provinces of France, the

the nobility and communities formed aſſociations, whereby they bound themſelves to defend their rights and privileges againſt the formidable and arbitrary proceedings of the King. The Count de Boulainvilliers has preſerved a copy of one of theſe aſſociations, dated in the year 1314, twelve years after the admiſſion of the deputies from towns into the States General. Hiſtoire de l'ancien gouvernement de la France, tom. ii. p. 94. The vigour with which the people aſſerted and prepared to maintain their rights, obliged their ſovereigns to reſpect them. Six years after this aſſociation, Philip the Long iſſued a writ of ſummons to the community of Narbonne, in the following terms: "Philip, by the Grace, &c. to our well-beloved, &c. As we deſire with all our heart, and above all other things, to govern our kingdom and people in peace and tranquillity, by the help of God; and to reform our ſaid kingdom in ſo far as it ſtands in need thereof, for the publick good, and for the benefit of our ſubjects, who in times paſt have been aggrieved and oppreſſed in diverſe manners by the malice of ſundry perſons, as we have learned by common report, as well as by the information of good men worthy of credit, and we having determined in our council which we have called to meet in our good city, &c. to give redreſs to the utmoſt of our power, by all ways and means poſſible, according to reaſon and juſtice, and willing that this ſhould be done with ſolemnity and deliberation by the advice of the prelates,

prelates, barons, and good towns of our realm, and particularly of you, and that it ſhould be tranſacted agreeably to the will of God, and for the good of our people, therefore we command," &c. Mably, Obſervat. ii. App. p. 386. I ſhall allow theſe to be only the formal words of a publick and legal ſtile, but the ideas are ſingular, and much more liberal and enlarged than one could expect in that age. A popular monarch of Great Britain could hardly addreſs himſelf to parliament, in terms more favourable to publick liberty. There occurs in the Hiſtory of France a ſtriking inſtance of the progreſs which the principles of liberty had made in that kingdom, and of the influence which the deputies of towns had acquired in the States General. During the calamities in which the war with England, and the captivity of King John, had involved France, the States General made a bold effort to extend their own privileges and juriſdiction. The regulations eſtabliſhed by the States held A. D. 1355, concerning the mode of levying taxes, the adminiſtration of which they veſted not in the crown, but in commiſſioners appointed by the States; concerning the coining of money; concerning the redreſs of the grievance of purveyance; concerning the regular adminiſtration of juſtice; are much more ſuitable to the genius of a republican government than that of a feudal monarchy. This curious ſtatute is publiſhed, Ordon. t. iii. p. 19. Such as have not an opportunity to conſult that large

large collection will find an abridgment of it, in Hist. de France par Villaret, tom. ix. p. 130. or in Histoire de Boulainv. tom. ii. 213. The French historians represent the bishop of Laon, and Marcel Provost of the merchants of Paris, who had the chief direction of this assembly, as seditious tribunes, violent, interested, ambitious, and aiming at innovations subversive of the constitution and government of their country. That may have been the case, but these men possessed the confidence of the people; and the measures which they proposed as the most popular and acceptable, plainly prove that the spirit of liberty had spread wonderfully, and that the ideas which then prevailed in France concerning government were extremely liberal. The States General held at Paris A. D. 1355, consisted of about eight hundred members, and above one half of these were deputies from towns. M. Secousse Pref. a Ordon. tom. iii. p. 48. It appears that in all the different assemblies of the States, held during the reign of John, the representatives of towns had great influence, and in every respect the third State was considered as co-ordinate and equal to either of the other two. Ibid. passim. These spirited efforts were made in France long before the House of Commons in England acquired any considerable influence in the legislature. As the feudal system was carried to its utmost height in France sooner than in England, so it began to decline sooner in the former than in the latter kingdom. In England,

land, almoſt all attempts to eſtabliſh or to extend the liberty of the people have been ſucceſsful; in France they have proved unfortunate. What were the accidental events, or political cauſes which occaſioned this difference, it is not my preſent buſineſs to enquire.

NOTE XX. Sect. I. p. 48. [U].

In a former Note, N° VIII. I have enquired into the condition of that part of the people which was employed in agriculture, and have repreſented the various hardſhips and calamities of their ſituation. When charters of liberty and manumiſſion were granted to ſuch perſons, they contained four conceſſions correſponding to the four capital grievances to which men in a ſtate of ſervitude are ſubject. 1. The right of diſpoſing of their perſons by ſale or grant was relinquiſhed. 2. Power was given to them of conveying their property and effects by will or any other legal deed. Or if they happened to die inteſtate, it was provided that their property ſhould go to their lawful heirs in the ſame manner as the property of other perſons. 3. The ſervices and taxes which they owed to their ſuperior or liege Lord, which were formerly arbitrary and impoſed at pleaſure, are preciſely aſcertained. 4. They are allowed the privilege of marrying whatever perſon they choſe, as formerly they could contract no marriage without their Lord's permiſſion, and with no perſon but one of his ſlaves. All theſe

 particulars,

particulars are found united in the charter granted Habitatoribus Montis-Britonis. A. D. 1376. Hist. de Dauphinè, tom. i. p. 81. Many circumstances concurred with those which I have mentioned in the text in procuring them deliverance from that wretched state. The gentle spirit of the Christian religion, together with the doctrines which it teaches, concerning the original equality of mankind, as well as the impartial eye with which the Almighty regards men of every condition, and admits them to a participation of his benefits, are inconsistent with servitude. But in this, as in many other instances, considerations of interest, and the maxims of false policy led men to a conduct inconsistent with their principles. They were so sensible, however, of the inconsistency, that to set their fellow Christians at liberty from servitude was deemed an act of piety highly meritorious and acceptable to heaven. The humane spirit of the Christian religion struggled with the maxims and manners of the world, and contributed more than any other circumstance to introduce the practice of manumission. When Pope Gregory the Great, who flourished toward the end of the sixth century, granted liberty to some of his slaves, he gives this reason for it, "Cum redemptor noster, totius conditor naturæ, ad hoc propitiatus humanam carnem voluerit assumere, ut divinitatis suæ gratia, dirempto (quo tenebamur captivi) vinculo, pristinæ nos restitueret libertati; salubriter agitur, si homines, quos ab initio liberos natura protulit, & jus gentium jugo substituit servitutis, in ea,

quâ nati fuerant, manumittentis beneficio libertate reddantur." Gregor. Magn. ap. Potgieff. lib. iv. c. i. § 3. Several laws or charters founded on reasons similar to this, are produced by the same author. Accordingly a great part of the charters of manumission previous to the reign of Louis X. are granted pro amore dei, pro remedio animæ, & pro mercede animæ. Murat. Antiq. Ital. vol. i. p. 849, 850. Du Cange, voc. *manumissio*. The formality of manumission was executed in a church, as a religious solemnity. The person to be set free was led round the great altar with a torch in his hand, he took hold of the horns of the altar, and there the solemn words conferring liberty were pronounced. Du Cange, Ib. vol. iv. p. 467. I shall transcribe a part of a charter of manumission granted A. D. 1056; both as it contains a full account of the ceremonies used in this form of manumission, and as a specimen of the imperfect knowledge of the Latin tongue in that barbarous age. It is granted by Willa the widow of Hugo the Duke and Marquis, in favour of Clariza one of her slaves. " Et ideo nos Domine Wille inclite cometisse—libera et absolvo te Cleriza filia Uberto —pro timore omnipotentis dei, & remedio luminarie anime bone memorie quondam supra scripto Domini Ugo gloriossissimo, ut quando illum Dominus de hac vita migrare, jusserit, pars iniqua non abeat potestatem ullam, sed anguelus Domini nostri Jesu Christi colocare dignitur illum inter sanctos dilectos suos; & beatus Petrus princips apostolorum, qui habed potestatem omnium animarum

marum ligandi et abſolvendi, ut ipſi abſolvat animæ ejus de peccatis ſui, & aperiad illum janua paradiſi; pro eadem vero rationi, in mano mite te Benzo preſbiter, ut vadat tecum in eccleſia ſancti Bartholomæi apoſtoli; traad te tribus vicibus circa altare ipſius eccleſiæ cum cæreo apprehenſum in manibus tuis & manibus ſuis; deinde exite ambulate in via quadrubio, ubi quatuor vie ſe deviduntur. Statimq; pro remedio luminarie anime bone memorie quondam ſupra ſcripto Domini Ugo, et ipſi preſbiter Benzo fecit omnia, & dixit, Ecce quatuor vie, ite et ambulate in quacunq; partem tibi placuerit, tam ſic ſupra ſcripta Cleriza, qua noſque tui heredes, qui ab ac hora in antea nati, vel procreati fuerit utriuſq; ſexus, &c." Murat. ib. p. 853. Many other charters might have been ſelected, which, in point of grammar or ſtyle, are in no wiſe ſuperior to this. Manumiſſion was frequently granted on death-bed or by latter-will. As the minds of men are at that time awakened to ſentiments of humanity and piety, theſe deeds proceeded from religious motives, and are granted *pro redemptione animæ*, in order to obtain acceptance with God. Du Cange ubi ſupra, p. 470. & voc. *ſervus*, vol. vi. p. 451. Another method of obtaining liberty was by entering into holy orders, or taking the vow in a monaſtery. This was permitted for ſome time; but ſo many ſlaves eſcaped, by this means, out of the hands of their maſters, that the practice was afterwards reſtrained, and at laſt prohibited by the laws of almoſt all the nations of Europe. Murat. ib. p. 842. Conformably

formably to the ſame principles, Princes, on the birth of a ſon, or upon any other agreeable event, appointed a certain number of ſlaves to be enfranchiſed, as a teſtimony of their gratitude to God for that benefit. Marculfi Form. lib. i. cap. 39. There are ſeveral forms of manumiſſion publiſhed by Marculfus, and all of them are founded on religious conſiderations, in order to procure the favour of God, or to obtain the forgiveneſs of their ſins. Lib. ii. c. 23, 33, 34, edit. Baluz. The ſame obſervation holds with reſpect to the other collections of Formulæ annexed to Marculfus. As ſentiments of religion induced ſome to grant liberty to their fellow-Chriſtians who groaned under the yoke of ſervitude; ſo miſtaken ideas concerning devotion led others to relinquiſh their liberty. When a perſon conceived an extraordinary reſpect for the ſaint who was the patron of any church or monaſtery in which he was accuſtomed to attend religious worſhip, it was not unuſual among men poſſeſſed with an exceſs of ſuperſtitious reverence, to give up themſelves and their poſterity to be the ſlaves of the ſaint. Mabillon. de re Diplomat. lib. vi. 632. The *oblati* or voluntary ſlaves of churches or monaſteries were very numerous, and may be divided into three different claſſes. The firſt were ſuch as put themſelves and effects under the protection of a particular church or monaſtery, binding themſelves to defend its privileges and property againſt every aggreſſor. Theſe were prompted to

do ſo, not merely by devotion, but in order to obtain that ſecurity which aroſe from the protection of the church. They were rather vaſſals than ſlaves, and ſometimes perſons of noble birth found it prudent to ſecure the protection of the church in this manner. Perſons of the ſecond claſs bound themſelves to pay an annual tax or quit-rent out of their eſtates to a church or monaſtery. Beſides this, they ſometimes engaged to perform certain ſervices. They were called *cenſuales*. The laſt claſs conſiſted of ſuch as actually renounced their liberty, and became ſlaves in the ſtrict and proper ſenſe of the word. Theſe were called *miniſteriales*, and enſlaved their bodies, as ſome of the charters bear, that they might procure the liberty of their ſouls. Potgieſſerus de ſtatu ſervorum, lib. i. cap. i. § 6, 7. How zealous the clergy were to encourage the opinions which led to this practice will appear from a clauſe in a charter by which one gives up himſelf as a ſlave to a monaſtery, "Cum ſit omni carnali ingenuitate generoſius extremum quodcumq; Dei ſervitium, ſcilicet quod terrena nobilitas multos plerumq; vitiorum ſervos facit, ſervitus vero Chriſti nobiles virtutibus reddit, nemo autem ſani capitis virtutibus vitia comparaverit, claret pro certo eum eſſe generoſiorem, qui ſe Dei ſervitio præbuerit proniorem. Quod ego Ragnaldus intelligens, &c." Another author ſays, "Eligens magis eſſe ſervus Dei quam libertus ſæculi, firmiter credens & ſciens, quod ſervire Deo, regnare eſt, ſummaque ingenuitas ſit in qua

ſervitus

ſervitus comparabatur Chriſti, &c." Du Cange, voc. *oblatus*, vol. iv. p. 1286, 1287. It does not appear, that the enfranchiſement of ſlaves was a frequent practice while the feudal ſyſtem preſerved its vigour. On the contrary, there were laws which ſet bounds to this practice as detrimental to ſociety. Potgieſſ. lib. iv. c. 2. § 6. The inferior order of men owed the recovery of their liberty to the decline of that ariſtocratical policy, which lodged the moſt extenſive power in the hands of a few members of the ſociety, and depreſſed all the reſt. When Louis X. iſſued his ordonance, ſeveral ſlaves had been ſo long accuſtomed to ſervitude, and their minds were ſo much debaſed by that unhappy ſituation, that they refuſed to accept of the liberty which was offered them. D'Ach. Spicel. v. xi. p. 387. Long after the reign of Louis X. ſeveral of the French nobility continued to aſſert their ancient dominion over their ſlaves. It appears from an ordonance of the famous Bertrand de Gueſclin Conſtable of France, that the cuſtom of enfranchiſing them was conſidered as a pernicious innovation. Morice Mem. pour ſervir des preuves à l'hiſt. de Bret. tom. ii. p. 100. In ſome inſtances, when the prædial ſlaves were declared to be freemen, they were ſtill bound to perform certain ſervices to their ancient maſters; and were kept in a ſtate different from other ſubjects, being reſtricted either from purchaſing land, or becoming members of a community within the precincts of the manor to which

they formerly belonged. Martene & Durand. Thesaur. Anecdot. vol. i. p. 914. This, however, seems not to have been common.—There is no general law for the manumission of slaves in the Statute-book of England similar to that which has been quoted from the Ordonances of the Kings of France. Though the genius of the English constitution seems early to have favoured personal liberty, personal servitude, nevertheless, continued long in England in some particular places. In the year 1514, we find a charter of Henry VIII. enfranchising two slaves belonging to one of his manors. Rym. Fœder. vol. xiii. p. 470. As late as the year 1574, there is a commission from Queen Elizabeth with respect to the manumission of certain bondmen belonging to her. Rymer. in Observat. on the statutes, &c. p. 251.

NOTE XXI. Sect. I. p. 56. [X].

There is no custom in the middle ages more singular than that of private war. It is a right of so great importance, and prevailed so universally, that the regulations concerning it make a considerable figure in the system of laws during the middle ages. M. de Montesquieu, who has unravelled so many intricate points in feudal jurisprudence, and thrown light on so many customs formerly obscure and unintelligible, was not led by his subject to consider this. I shall therefore give a more minute account of the customs and regulations which directed a practice so contrary

to

to the prefent ideas of civilized nations concerning government and order. 1. Among the ancient Germans, as well as other nations in a fimilar ftate of fociety, the right of avenging injuries was a private and perfonal right, exercifed by force of arms, without any reference to an umpire, or any appeal to a magiftrate for decifion. The cleareft proofs of this were produced Note VI. 2. This practice fubfifted among the barbarous nations after their fettlement in the provinces of the Empire which they conquered; and as the caufes of diffention among them multiplied, their family feuds and private wars became more frequent. Proofs of this occur in their early hiftorians. Greg. Turon. hift. lib. vii. c. 2. lib. viii. c. 18. lib. x. c. 27. and likewife in the codes of their laws. It was not only allowable for the relations to avenge the injuries of their family, but it was incumbent on them. Thus by the laws of the Angli and Werini, ad quemcunque hereditas terræ pervenerit, ad illum veftis bellica id eft lorica & ultio proximi, & folatio leudis, debet pertinere, tit. vi. § 5. ap. Lindenbr. Leg. Salic. tit. 63. Leg. Longob. lib. ii. tit. 14. § 10.—— 3. None but gentlemen, or perfons of noble birth, had the right of private war. All difputes among flaves, villani, the inhabitants of towns, and freemen of inferior condition, were decided in the courts of juftice. All difputes between gentlemen and perfons of inferior rank were terminated in the fame manner. The right of private war fuppofed nobility of birth, and equality of rank in the

the contending parties. Beaumanoir Couſtumes de Beauv. ch. lix. p. 300. Ordon. des Rois de France, tom. ii. 395. § xvii. 508. § xv, &c. The dignified eccleſiaſticks likewiſe claimed and exerciſed the right of private war; but as it was not altogether decent for them to proſecute quarrels in perſon, *advocati* or *vidames* were choſen by the ſeveral monaſteries and biſhopricks. Theſe were commonly men of high rank and reputation, who became the protectors of the churches and convents by whom they were elected; eſpouſed their quarrels, and fought their battles; armis omnia quæ erant eccleſiæ viriliter defendebant, et vigilanter protegebant. Bruſſel Uſage des Fiefs, tom. i. p. 144. Du Cange, voc. *advocatus*. On many occaſions, the martial ideas to which eccleſiaſticks of noble birth were accuſtomed, made them forget the pacifick ſpirit of their profeſſion, and led them into the field in perſon at the head of their vaſſals, "flamma, ferro, cæde, poſſeſſiones eccleſiarum prælati defendebant." Guido Abbas ap. Du Cange. Ib. p. 179.—4. It was not every injury or treſpaſs that gave a gentleman a title to make war upon his adverſary. Atrocious acts of violence, inſults and affronts publickly committed, were legal and permitted motives for taking arms againſt the authors of them. Such crimes as are now puniſhed capitally in civilized nations, at that time juſtified private hoſtilities. Beauman. ch. lix. Du Cange Diſſert. xxix. ſur Joinville, p. 331. But though the avenging of injuries was the only motive that could legally authoriſe a private war,

yet

yet disputes concerning civil property often gave rise to hostilities, and were terminated by the sword. Du Cange Dissert. p. 332.—5. All persons present when any quarrel arose, or any act of violence was committed, were included in the war which it occasioned, for it was supposed to be impossible for any man in such a situation to remain neutral, without taking side with one or other of the contending parties. Beauman. p. 300. —6. All the kindred of the two principals in the war were included in it, and obliged to espouse the quarrel of the chieftain with whom they were connected. Du Cange, ib. 332 This was founded on the maxim of the ancient Germans, "suscipere tam inimicitias seu patris, seu propinqui, quam amicitias, necesse est;" a maxim natural to all rude and simple nations, among which the form of society, and political union, strengthens such a sentiment. The method of ascertaining the degree of affinity which obliged a person to take part in the quarrel of a kinsman was curious. While the church prohibited the marriage of persons within the seventh degree of affinity, the vengeance of private war extended as far as this absurd prohibition, and all who had such a remote connection with any of the principals were involved in the calamities of war. But when the church relaxed somewhat of its rigour, and did not extend its prohibition of marrying beyond the fourth degree of affinity, the same restriction took place in the conduct of private war. Beauman. 303. Du Cange Dissert. 333.—7. A private war could

could not be carried on between two full brothers, because both have the ſame common kindred, and conſequently neither have any perſons bound to ſtand by him againſt the other, in the conteſt; but two brothers of the half blood might wage war, becauſe each of them has a diſtinct kindred. Beauman. p. 299.—8. The vaſſals of each principal in any private war were involved in the conteſt, becauſe by the feudal maxims they were bound to take arms in defence of the chieftain of whom they held, and to aſſiſt him in every quarrel. As ſoon, therefore, as the feudal tenures were introduced, and this artificial connection was eſtabliſhed between vaſſals and the baron of whom they held, vaſſals came to be conſidered as in the ſame ſtate with relations. Beauman. 303.—9. Private wars were very frequent for ſeveral centuries. Nothing contributed more to increaſe thoſe diſorders in government, and that ferocity of manners which reduced the nations of Europe to that wretched ſtate which diſtinguiſhed the period of hiſtory which I am reviewing. Nothing was ſuch an obſtacle to the introduction of a regular adminiſtration of juſtice. Nothing could more effectually diſcourage induſtry, or retard the progreſs and cultivation of the arts of peace. Private wars were carried on with all the deſtructive rage, which is to be dreaded from violent reſentment when armed with force, and authoriſed by law. It appears from the laws prohibiting or reſtraining the exerciſe of private hoſtilities, that the invaſion of the moſt barbarous enemy could not be more

deſolating

deſolating to a country, or more fatal to its inhabitants, than thoſe inteſtine wars. Ordon. t. i. p. 701. tom. ii. 395, 408, 507, &c. The contemporary hiſtorians deſcribe the exceſſes committed in proſecution of theſe quarrels in ſuch terms as excite aſtoniſhment and horror. I ſhall mention only one paſſage from the hiſtory of the Holy War, by Guibert Abbot of Nogent: "Erat eo tempore maximis ad invicem hoſtilitatibus, totius Francorum regni facta turbatio; crebra ubiq; latrocinia, viarum obſeſſio; audiebantur paſſim, immo fiebant incendia infinita; nullis præter ſola & indomita cupiditate exiſtentibus cauſis extruebantur prælia; & ut brevi totum claudam, quicquid obtutibus cupidorum ſubjacebat, nuſquam attendendo cujus eſſet, prædæ patebat." Geſta Dei per Francos, vol. i. p. 482.

Having thus collected the chief regulations which cuſtom had eſtabliſhed concerning the right and exerciſe of private war, I ſhall enumerate in chronological order the various expedients employed to aboliſh or reſtrain this fatal cuſtom. 1. The firſt expedient employed by the civil magiſtrate in order to ſet ſome bounds to the violence of private revenge, was the fixing by law the fine or compoſition to be paid for each different crime. The injured perſon was originally the ſole judge concerning the nature of the wrong which he had ſuffered, the degree of vengeance which he ſhould exact, as well as the ſpecies of atonement or reparation with which he ſhould reſt ſatisfied. Reſentment

ſentment became of courſe as implacable as it was fierce. It was often a point of honour not to forgive, nor to be reconciled. This made it neceſſary to fix thoſe compoſitions which make ſo great a figure in the laws of barbarous nations. The nature of crimes and offences was eſtimated by the magiſtrate, and the ſum due to the perſon offended was aſcertained with a minute, and often a whimſical accuracy. Rotharis, the legiſlator of the Lombards, who reigned about the middle of the ſeventh century, diſcovers his intention both in aſcertaining the compoſition to be paid by the offender, and in increaſing its value; it is, ſays he, that the enmity may be extinguiſhed, the proſecution may ceaſe, and peace may be reſtored. Leg. Langob. lib. i. tit. 7. § 10.—2. About the beginning of the ninth century, Charlemagne ſtruck at the root of the evil, and enacted, "That when any perſon had been guilty of a crime, or had committed an outrage, he ſhould immediately ſubmit to the penance which the church impoſed, and offer to pay the compoſition which the law preſcribed; and if the injured perſon or his kindred ſhould refuſe to accept of this, and preſume to avenge themſelves by force of arms, their lands and properties ſhould be forfeited." Capitul. A. D. 802. edit. Baluz. vol. i. 371.—3. But in this, as well as in other regulations, the genius of Charlemagne advanced before the ſpirit of his age. The ideas of his contemporaries concerning regular government were too imperfect, and their man-

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ners too fierce to ſubmit to this law. Private wars, with all the calamities which they occaſioned, became more frequent than ever after the death of that great monarch. His ſucceſſors were unable to reſtrain them. The church found it neceſſary to interpoſe. The moſt early of theſe interpoſitions now extant, is towards the end of the tenth century. In the year 990, ſeveral biſhops in the ſouth of France aſſembled, and publiſhed various regulations, in order to ſet ſome bounds to the violence and frequency of private wars; if any perſon within their dioceſes ſhould venture to tranſgreſs, they ordained that he ſhould be excluded from all Chriſtian privileges during his life, and be denied Chriſtian burial after his death. Du Mont Corps Diplomatique, tom. i. p. 41. Theſe, however, were only partial remedies; and therefore a council was held at Limoges, A. D. 994. The bodies of the ſaints, according to the cuſtom of thoſe ages, were carried thither; and by theſe ſacred relicks men were exhorted to lay down their arms, to extinguiſh their animoſities, and to ſwear that they would not for the future violate the publick peace by their private hoſtilities. Bouquet Recueil des Hiſtor. vol. x. p. 49, 147. Several other councils iſſued decrees to the ſame effect. Du Cange Diſſert. 343.—4. But the authority of councils, how venerable ſoever in thoſe ages, was not ſufficient to aboliſh a cuſtom which flattered the pride of the nobles, and gratified their favourite paſſions. The evil grew ſo intolerable, that it became

came neceſſary to employ ſupernatural means for ſuppreſſing it. A biſhop of Aquitaine, A. D. 1032, pretended that an angel had appeared to him, and brought him a writing from heaven, enjoining men to ceaſe from their hoſtilities, and to be reconciled to each other. It was during a ſeaſon of public calamity that he publiſhed this revelation. The minds of men were diſpoſed to receive pious impreſſions; and willing to perform any thing in order to avert the wrath of heaven. A general peace and ceſſation from hoſtilities took place, and continued for ſeven years; and a reſolution was formed, that no man ſhould in times to come attack or moleſt his adverſaries during the ſeaſons ſet apart for celebrating the great feſtivals of the church, or from the evening of Thurſday in each week to the morning of Monday in the week enſuing, the intervening days being conſidered as particularly holy, our Lord's Paſſion having happened on one of theſe days, and his Reſurrection on another. A change in the diſpoſitions of men ſo ſudden, and which produced a reſolution ſo unexpected, was conſidered as miraculous; and the reſpite from hoſtilities which followed upon it, was called *The Truce of God.* Glaber. Rodulphus Hiſtor. lib. v. ap. Bouquet. vol. x. p. 59. This, from being a regulation or concert in one kingdom, became a general law in Chriſtendom, and was confirmed by the authority of the Pope, and the violaters were ſubjected to the penalty of excommunication. Corpus Jur. Canon. Decretal. lib. i. tit. 34. c. 1. Du Cange Gloſſar. voc. *Treuga.*

An act of the council of Toulujes in Rouſſillon, A. D. 1041, containing all the ſtipulations required by the truce of God, is publiſhed by Dom de Vic & Dom Vaiſette Hiſt. de Languedoc, tom. ii. Preuves, p. 206. A ceſſation from hoſtilities during three complete days in every week, allowed ſuch a conſiderable ſpace for the paſſions of the antagoniſts to cool, and for the people to enjoy a reſpite from the calamities of war, as well as to take meaſures for their own ſecurity, that, if this truce of God had been exactly obſerved, it muſt have gone far towards putting an end to private wars. This, however, ſeems not to have been the caſe; the nobles, diſregarding the truce, proſecuted their quarrels without interruption as formerly. Qua nimirum tempeſtate, univerſæ provinciæ adeo devaſtationis continuæ importunitate inquietantur, ut ne ipſa, pro obſervatione divinæ pacis, profeſſa ſacramenta cuſtodiantur. Abbas Uſpergenſis apud Datt de pace imperii publica, p. 13. N°. 35. The violent ſpirit of the nobility could not be reſtrained by any engagements. The complaints of this were frequent; and biſhops, in order to compel them to renew their vows and promiſes of ceaſing from their private wars, were obliged to enjoin their clergy to ſuſpend the performance of divine ſervice, and the exerciſe of any religious function within the pariſhes of ſuch as were refractory and obſtinate. Hiſt. de Langued. par D. D. de Vic & Vaiſette, tom. ii. Preuves, p. 118.—5. The people, eager to obtain relief from their ſufferings, called in a ſecond time a pretended revelation to

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their aid. Towards the end of the twelfth century, a carpenter in Guienne gave out, that Jeſus Chriſt, together with the bleſſed Virgin, had appeared to him, and having commanded him to exhort mankind to peace, had given him, as a proof of his miſſion, an image of the Virgin holding her ſon in her arms, with this inſcription, *Lamb of God, who takeſt away the ſins of the world, give us peace.* This low fanatick addreſſed himſelf to an ignorant age, prone to credit what was marvellous. He was received as an inſpired meſſenger of God. Many prelates and barons aſſembled at Puy, and took an oath, not only to make peace with all their own enemies, but to attack ſuch as refuſed to lay down their arms, and to be reconciled to their enemies. They formed an aſſociation for this purpoſe, and aſſumed the honourable name of *the Brotherhood of God.* Robertus de Monte Michaele ap. M. de Lauriere Pref. tom. i. Ordon. p. 29. But the influence of this ſuperſtitious terror or devotion was not of long continuance.—6. The civil magiſtrate was obliged to exert his authority in order to check a cuſtom which threatened the diſſolution of government. Philip Auguſtus, as ſome imagine, or St. Louis, as is more probable, publiſhed an ordonance, A. D. 1245, prohibiting any perſon to commence hoſtilities againſt the friends and vaſſals of his adverſary, until forty days after the commiſſion of the crime or offence which gave riſe to the quarrel; declaring, that if any man preſumed to tranſgreſs this ſtatute, he ſhould be conſidered as guilty of a breach of the publick peace,

peace, and be tried and punifhed by the judge ordinary as a traitor. Ordon. tom. i. p. 56. This was called *the Royal Truce*, and afforded time for the violence of refentment to fubfide, as well as leifure for the good offices of fuch as were willing to compofe the difference. The happy effects of this regulation feem to have been confiderable, if we may judge from the folicitude of fucceeding monarchs to enforce it.—7. In order to reftrain the exercife of private war ftill farther, Philip the Fair, towards the clofe of the fame century, A. D. 1296, publifhed an ordonance commanding all private hoftilities to ceafe, while he was engaged in war againft the enemies of the ftate. Ordon. tom. i. p. 328, 390. This regulation, which feems to be almoft effential to the exiftence and prefervation of fociety, was often renewed by his fucceffors, and being enforced by the regal authority, proved a confiderable check to the deftructive contefts of the nobles. Both thefe regulations, introduced firft in France, were adopted by the other nations of Europe.—8. The evil, however, was fo inveterate, that it did not yield to all thefe remedies. No fooner was publick peace eftablifhed in any kingdom, than the barons renewed their private hoftilities. They not only ftruggled to maintain this pernicious right, but to fecure the exercife of it without any reftraint. Upon the death of Philip the Fair, the nobles of different provinces in France formed affociations, and prefented remonftrances to his fucceffor, demanding the repeal of feveral laws, by which he had abridg-

ed the privileges of their order. Among these, the right of private war is always mentioned as one of the most valuable; and they claim, that the restraint imposed by the truce of God, the royal truce, as well as that arising from the ordonance of the year 1296, should be taken off. In some instances, the two sons of Philip, who mounted the throne successively, eluded their demands; in others, they were obliged to make concessions. Ordon. tom. i. p. 551, 557, 561, 573. The ordonances to which I here refer, are of such length that I cannot insert them, but they are extremely curious, and may be peculiarly instructive to an English reader, as they throw considerable light on that period of English history, in which the attempts to circumscribe the regal prerogative were carried on, not by the people struggling for liberty, but by the nobles contending for power. It is not necessary to produce any evidence of the continuance and frequency of private wars under the successors of Philip the Fair.—9. A practice somewhat similar to the royal truce was introduced, in order to strengthen and extend it. Bonds of assurance, or mutual security, were demanded from the parties at variance, by which they obliged themselves to abstain from all hostilities, either during a time mentioned in the bond, or for ever; and became subject to heavy penalties, if they violated this obligation. These bonds were sometimes granted voluntarily, but more frequently exacted by the authority of the civil magistrate. Upon a petition from the party who felt himself weakest,

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the magiſtrate ſummoned his adverſary to appear in court, and obliged him to give a bond of aſſurance. If, after that, he committed any farther hoſtilities, he became ſubject to all the penalties of treaſon. This reſtraint on private war was known in the age of St. Louis. Eſtabliſſemens, liv. i. c. 28. It was frequent in Bretagne; and what is very remarkable, ſuch bonds of aſſurance were given mutually between vaſſals and the lord of whom they held. Oliver de Cliſſon grants one to the Duke of Bretagne, his ſovereign. Morice Mem. pour ſervir de preuves à l'hiſt. de Bret. tom. i. p. 846. ii. p. 371. Many examples of bonds of aſſurance in other provinces of France are collected by Bruſſel. tom. ii. p. 856. The nobles of Burgundy remonſtrated againſt this practice, and obtained exemption from it as an encroachment on the privileges of their order. Ordon. tom. i. p. 558. This mode of ſecurity was firſt introduced in cities, and the good effects of it having been felt there, was extended to the nobles. See Note XVI.—10. The calamities occaſioned by private wars became at ſome times ſo intolerable, that the nobles entered into voluntary aſſociations, binding themſelves to refer all matters in diſpute, whether concerning civil property, or points of honour, to the determination of the majority of the aſſociates. Morice Mem. pour ſervir de preuves à l'hiſt. de Bret. tom. ii. p. 728.—11. But all theſe expedients proving ineffectual, Charles VI. A. D. 1413, iſſued an ordonance expreſsly prohibiting private wars on any pretext whatſoever, with power to the judge ordinary

ordinary to compel all persons to comply with this injunction, and to punish such as should prove refractory or disobedient, by imprisoning their persons, seizing their goods, and appointing the officers of justice, *Mangeurs & Gasteurs*, to live at free quarters on their estate. If those who were disobedient to this edict could not be personally arrested, he appointed their friends and vassals to be seized, and detained until they gave surety for keeping the peace; and he abolished all laws, customs, or privileges which might be pleaded in opposition to this ordonance. Ordon. tom. x. p. 138. How slow is the progress of reason and of civil order! Regulations which to us appear so equitable, obvious, and simple, required the efforts of civil and ecclesiastical authority, during several centuries, to introduce and establish them. Even posterior to this period, Louis XI. was obliged to abolish private wars in Dauphinè, by a particular edict, A. D. 1451. Du Cange dissert. p. 348.

This note would swell to a disproportional bulk, if I should attempt to enquire with the same minute attention into the progress of this pernicious custom in the other countries of Europe. In England, the ideas of the Saxons concerning personal revenge, the right of private wars, and the composition due to the party offended, seem to have been much the same with those which prevailed on the Continent. The law of Ina *de Vindicantibus*, in the eighth century, Lamb. p. 3; those of Edmund in the tenth century, *de homicidio*, Lamb. p. 72.

p. 72. & *de inimicitiis*, p. 76; and thoſe of Edward the Confeſſor, in the eleventh century, *de temporibus & diebus pacis*, or Treuga Dei, Lamb. p. 126, are perfectly ſimilar to the *ordonances* of the French Kings their contemporaries. The laws of Edward, *de pace regis*, are ſtill more explicit than thoſe of the French Monarchs, and, by ſeveral proviſions in them, diſcover that a more perfect police was eſtabliſhed in England at that period. Lambard. p. 128. fol. verſ. Even after the conqueſt, private wars, and the regulations for preventing them, were not altogether unknown, as appears from Madox Formulare Anglicanum, N°. CXLV. and from the extracts from Domeſday Book, publiſhed by Gale Scriptores hiſt. Britan. p. 759, 777. The well known clauſe in the form of an Engliſh indictment, which, as an aggravation of the criminal's guilt, mentions his having aſſaulted a perſon, who was in the peace of God and of the King, ſeems to be borrowed from the Treuga or Pax Dei and the Pax Regis which I have explained. But after the conqueſt, the mention of private wars among the nobility, occurs more rarely in the Engliſh hiſtory, than in that of any other European nation, and no laws concerning them are to be found in the body of their ſtatutes. Such a change in their own manners, and ſuch a variation from thoſe of their neighbours, is remarkable. Is it to be aſcribed to the extraordinary power which William the Norman acquired by right of conqueſt, and tranſmitted to his ſucceſſors, which rendered the execution of juſtice more vigorous and deci-

five, and the jurisdiction of the King's court more extensive than under the Monarchs on the Continent? Or, was it owing to the settlement of the Normans in England, who having never adopted the practice of private war in their own country, abolished it in the kingdom which they conquered? It is asserted in an ordonance of John King of France, that in all times past, persons of every rank in Normandy have been prohibited to wage war, and the practice has been deemed unlawful. Ordon. tom. ii. p. 407. If this fact were certain, it would go far towards explaining the peculiarity which I have mentioned. But as there are some English Acts of Parliament, which, according to the remark of the learned author of the *Observations on the Statutes, chiefly the more ancient*, recite falsehoods, it may be added, that this is not peculiar to the laws of that country. Notwithstanding the positive assertion contained in this publick law of France, there is good reason for considering it as a statute which recites a falsehood. This, however, is not the place for discussing that point. It is an inquiry not unworthy the curiosity of an English antiquarian.

In Castile, the pernicious practice of private war prevailed, and was authorised by the customs and law of the kingdom. Leges Tauri. tit. 76. cum commentario Anton. Gomezii, p. 551. As the Castilian nobles were no less turbulent than powerful, their quarrels and hostilities involved their country

country in many calamities. Innumerable proofſ of this occur in Mariana. In Aragon, the right of private revenge was likewiſe authoriſed by law; exerciſed in its full extent, and accompanied with the ſame unhappy conſequences. Hieron. Blanca Comment. de rebus Arag. ap. Schotti. Hiſpan. illuſtrat. vol. iii. p. 733. Lex Jacobi I. A. D. 1247. Fueros & Obſervancias del Reyno de Aragon, lib. ix. p. 182. Several confederacies between the Kings of Aragon and their nobles, for the reſtoring of peace, founded on the truce of God, are ſtill extant. Petr. de Marca. *Marca* ſivi Limes Hiſpanic. App. 1303, 1388, 14 8. As early as the year 1165, we find a combination of the King and court of Aragon, in order to aboliſh the right of private war, and to puniſh thoſe who preſumed to claim that privilege. Anales de Aragon por Zurita, vol. i. p. 73. But the evil was ſo inveterate, that Charles V. A. D. 1519. was obliged to publiſh a law enforcing all former regulations tending to ſuppreſs this practice. Fueros & Obſervanc. lib. ix. 183. b.

The Lombards, and other northern nations who ſettled in Italy, introduced the ſame maxims concerning the right of revenge into that country, and theſe were followed by the ſame effects. As the progreſs of the evil was perfectly ſimilar to what happened in France, the expedients employed to check its career, or to extirpate it finally, reſembled thoſe which I have enumerated. Murat. Ant. Ital. vol. ii. p. 306.

In Germany the diſorders and calamities occaſioned by the right of private war were greater and more intolerable than in any other country of Europe. The Imperial authority was ſo much ſhaken and enfeebled by the violence of the civil wars, excited by the conteſts between the Popes and the Emperors of the Franconian and Suabian lines, that not only the nobility but the cities acquired almoſt independent power, and ſcorned all ſubordination and obedience to the laws. The frequency of theſe *faidæ* or private wars, are often mentioned in the German Annals, and the fatal effects of them are moſt pathetically deſcribed, Datt. de pace Imper. pub. lib. i. cap. v. n°. 30. & paſſim. The Germans early adopted the Treuga Dei, which was firſt eſtabliſhed in France. This, however, proved but a temporary and ineffectual remedy. The diſorders multiplied ſo faſt, and grew ſo enormous, that they threatened the diſſolution of ſociety, and compelled the Germans to have recourſe to the only remedy of the evil, viz. an abſolute prohibition of private wars. The Emperor, William, publiſhed his edict to this purpoſe, A. D. 1255, an hundred and ſixty years previous to the ordonance of Charles VI. in France. Datt. lib. i. cap. 4. n°. 20. But neither he nor his ſucceſſors had authority to ſecure the obſervance of it. This gave riſe to a practice in Germany, which conveys to us a ſtriking idea both of the intolerable calamities occaſioned by private wars, and of the feebleneſs of government during the twelfth and thirteenth centuries. The

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cities and nobles entered into alliances and aſſociations, by which they bound themſelves to maintain the publick peace, and to make war on ſuch as ſhould violate it. This was the origin of the league of the Rhine, of Suabia, and of many ſmaller confederacies diſtinguiſhed by various names. The riſe, progreſs, and beneficial effects of theſe aſſociations are traced by Datt with great accuracy. Whatever degree of publick peace, or of regular adminiſtration was preſerved in the Empire from the beginning of the twelfth century to the cloſe of the fifteenth, Germany owes to theſe leagues. During that period, political order, reſpect for the laws, together with the equal adminiſtration of juſtice, made conſiderable progreſs in Germany. But the final and perpetual abolition of the right of private war was not accompliſhed until A. D. 1495. The Imperial authority was by that time more firmly eſtabliſhed, the ideas of men with reſpect to government and ſubordination were become more juſt. That barbarous and pernicious privilege which the nobles had ſo long poſſeſſed, was declared to be incompatible with the happineſs and exiſtence of ſociety. In order to terminate any differences which might ariſe among the various numbers of the Germanick body, the Imperial chamber was inſtituted with ſupreme juriſdiction, to judge without appeal in every queſtion brought before it. That court has ſubſiſted ſince that period, forming a very reſpectable tribunal, of eſſential importance in the Ger-

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man conſtitution. Datt. lib. iii. iv. v. Pfeffel abregé de l'Hiſtoire du Droit, &c. p. 556.

NOTE XXII. Sect. I. p. 67. [Y].

It would be tedious and of little uſe to enumerate the various modes of appealing to the juſtice of God, which ſuperſtition introduced during the ages of ignorance. I ſhall mention only one, becauſe we have an account of it in a placitum or trial in the preſence of Charlemagne, from which we may learn the imperfect manner in which juſtice was adminiſtered even during his reign. In the year 775, a conteſt aroſe between the biſhop of Paris and the abbot of St. Denys, concerning the property of a ſmall abbey. Each of them exhibited deeds and records, in order to prove the right to be in them. Inſtead of trying the authenticity, or conſidering the import of theſe, the point was referred to the *judicium crucis*. Each produced a perſon, who, during the celebration of maſs, ſtood before the croſs with his arms expanded; and he whoſe repreſentative firſt became weary, and altered his poſture, loſt the cauſe. The perſon employed by the biſhop on this occaſion had leſs ſtrength or leſs ſpirit than his adverſary, and the queſtion was decided in favour of the abbot. Mabillon de re Diplomat. lib. vi. p. 498. If a Prince ſo enlightened as Charlemagne countenanced ſuch an abſurd mode of deciſion, it is no wonder that other monarchs ſhould

ſhould tolerate it ſo long. M. de Monteſquieu has treated of the trial by judicial combat at conſiderable length. The two talents which diſtinguiſh that illuſtrious author, induſtry in tracing all the circumſtances of ancient and obſcure inſtitutions, and ſagacity in penetrating into the cauſes and principles which contributed to eſtabliſh them, are equally conſpicuous in his obſervations on this ſubject. To theſe I refer the reader, as they contain moſt of the principles by which I have endeavoured to explain this practice. De l'Eſprit des Loix, lib. xxviii. It ſeems to be probable from the remarks of M. de Monteſquieu, as well as from the facts produced by Muratori, tom. iii. Diſſert. xxxviii. that the appeals to the juſtice of God by the experiments with fire and water, &c. were practiſed by the people who ſettled in the different provinces of the Roman Empire, before they had recourſe to the judicial combat. The judicial combat, however, was the moſt ancient mode of terminating any controverſy among the barbarous nations in their original ſettlements. This is evident from Velleius Paterculus, lib. ii. c. 118. who informs us, that all queſtions which were decided among the Romans by legal trial, were terminated among the Germans by arms. The ſame thing appears in the ancient laws and cuſtoms of the Swedes, quoted by Jo. O. Stiernhöök de Jure Sueonum & Gothorum vetuſto. 4to. Holmiæ 1682. lib. i. c. 7. It is probable that when the various tribes which invaded the Em-

pire were converted to Chriſtianity, the repugnance of the cuſtom of allowing judicial combats to the precepts of religion, was ſo glaring, that, for ſome time, it was aboliſhed, and by degrees, ſeveral circumſtances which I have mentioned, led them to reſume it.

It ſeems likewiſe to be probable from a law quoted by Stiernhöök in the treatiſe which I have mentioned, that the judicial combat was originally permitted, in order to determine points reſpecting the perſonal character, or reputation of individuals, and was afterwards extended not only to criminal caſes, but to queſtions concerning property. The words of the law are, "if any man ſhall ſay to another theſe reproachful words, "you are not a "man equal to other men," or, "you have not "the heart of a man," and the other ſhall reply, "I am a man as good as you." Let them meet on the highway. If he who firſt gave offence appear, and the perſon offended abſent himſelf, let the latter be deemed worſe than he was called; let him not be admitted to give evidence in judgment either for man or woman, and let him not have the privilege of making a teſtament. If the perſon offended appear, and he who gave the offence be abſent, let him call upon the other thrice with a loud voice, and make a mark upon the earth, and then let him who abſented himſelf be deemed infamous, becauſe he uttered words which he durſt not ſupport. If both ſhall appear

properly armed, and the person offended shall fall in the combat, let a half compensation be paid for his death. But if the person who gave the offence shall fall, let it be imputed to his own rashness. The petulance of his tongue hath been fatal to him. Let him lie in the field without any compensation being demanded for his death." Lex Uplandica ap. Stiern. p. 76. Martial people were extremely delicate with respect to every thing that affected their reputation as soldiers. By the laws of the Salians, if any man called another a *hare*, or accused him of having left his shield in the field of battle, he was ordained to pay a large fine. Leg. Sal. tit. xxxii. § 4. 6. By the law of the Lombards if any one called another *arga*, i. e. a good for nothing fellow, he might immediately challenge him to combat. Leg. Longob. lib. i. tit. v. § 1. By the law of the Salians, if one called another *cenitus*, a term of reproach equivalent to arga, the fine which he was bound to pay was very high. Tit. xxxii. § 1. Paulus Diaconus relates the violent impression which this reproachful expression made upon one of his countrymen, and the fatal effects with which it was attended. De Gestis Longobard. lib. vi. c. 24. Thus the ideas concerning the point of honour, which we are apt to consider as a modern refinement, as well as the practice of duelling, to which it gave rise, are derived from the notions of our ancestors, while in a state of society very little improved.

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As M. de Monteſquieu's view of this ſubject did not lead him to conſider every circumſtance relative to judicial combats, I ſhall mention ſome particular facts neceſſary for the illuſtration of what I have ſaid with reſpect to them. A remarkable inſtance occurs of the deciſion of an abſtract point of law by combat. A queſtion aroſe in the tenth century concerning the *right* of *repreſentation*, which was not then fixed, though now univerſally eſtabliſhed in every part of Europe. "It was a matter of doubt and diſpute, (ſaith the hiſtorian) whether the ſons of a ſon ought to be reckoned among the children of the family, and ſucceed equally with their uncles, if their father happened to die while their grandfather was alive. An aſſembly was called to deliberate on this point, and it was the general opinion that it ought to be remitted to the examination and deciſion of judges. But the Emperor following a better courſe, and deſirous of dealing honourably with his people and nobles, appointed the matter to be decided by battle between two champions. He who appeared in behalf of the right of children to repreſent their deceaſed father was victorious; and it was eſtabliſhed, by a perpetual decree, that they ſhould hereafter ſhare in the inheritance together with their uncles. Wittickindus Corbeins, lib. Annal. ap. M. de Lauriere Pref. Ordon. vol. i. p. xxxiii. If we can ſuppoſe the caprice of folly to lead men to any action more extravagant than this of ſettling a point in law by combat, it muſt be that of referring

referring the truth or falſehood of a religious opinion to be decided in the ſame manner. To the diſgrace of human reaſon, it has been capable even of this extravagance. A queſtion was agitated in Spain in the eleventh century, whether the Muſarabic Liturgy and ritual which had been uſed in the churches of Spain, or that approved of by the See of Rome, which differed in many particulars from the other, contained the form of worſhip moſt acceptable to the Deity. The Spaniards contended zealouſly for the ritual of their anceſtors. The Popes urged them to receive that to which they had given their infallible ſanction. A violent conteſt aroſe. The nobles propoſed to decide the controverſy by the ſword. The king approved of this method of deciſion. Two knights in compleat armour entered the liſts. John Ruys de Matanca, the champion of the Muſarabic Liturgy, was victorious. But the Queen and Archbiſhop of Toledo, who favoured the other form, inſiſted on having the matter ſubmitted to another trial, and had intereſt enough to prevail in a requeſt, inconſiſtent with the laws of combat, which being conſidered as an appeal to God, the deciſion ought to have been acquieſced in as final. A great fire was kindled. A copy of each Liturgy was caſt into the flames. It was agreed that the book which ſtood this proof, and remained untouched, ſhould be received in all the churches of Spain. The Muſarabic Liturgy triumphed likewiſe in this trial, and if we may believe Rode-

rigo de Toledo, remained unhurt by the fire, when the other was reduced to aſhes. The Queen and Archbiſhop had power or art ſufficient to elude this deciſion alſo, and the uſe of the Muſarabic form of devotion was permitted only in certain churches. A determination no leſs extraordinary than the whole tranſaction. Rodr. de Toledo, quoted by P. Orleans, Hiſt. de Revol. d'Eſpagne, tom. i. p. 217. Mariana, lib. i. c. 18. vol. i. p. 378.—A remarkable proof of the general uſe of trial by combat, and of the prædilection for that mode of deciſion occurs in the laws of the Lombards. It was a cuſtom in the middle ages, that any perſon might chuſe the law to which he would be ſubjected; and by the preſcriptions of that law he was obliged to regulate his tranſactions, without being bound to comply with any practice authorized by other codes of law. Perſons who had ſubjected themſelves to the Roman law, and adhered to the ancient juriſprudence, as far as any knowledge of it was retained in thoſe ages of ignorance, were exempted from paying any regard to the forms of proceedings eſtabliſhed by the laws of the Burgundians, Lombards, and other barbarous people. But the Emperor Otho, in direct contradiction to this received maxim, ordained, "That all perſons, under whatever law they lived, even although it were the Roman law, ſhould be bound to conform to the edicts concerning the trial by combat." Leg. Longob. lib. ii. tit. 55. § 38. While the judicial combat ſubſiſted,

ſubſiſted, proof by charters, contracts, or other deeds, became ineffectual; and even this ſpecies of evidence, calculated to render the proceedings of courts certain and deciſive, was eluded. When a charter or other inſtrument was produced by one of the parties, his opponent might challenge it, affirm that it was falſe and forged, and offer to prove this by combat. Leg. Longob. ib. § 34. It is true, that among the reaſons enumerated by Beaumanoir, on account of which judges might refuſe to permit a trial by combat, one is, " If the point in conteſt can be clearly proved or aſcertained by other evidence." Couſt. de Beauv. ch. 63. p. 323. But that regulation removed the evil only a ſingle ſtep. For the party who ſuſpected that a witneſs was about to depoſe in a manner unfavourable to his cauſe, might accuſe him of being ſuborned, give him the lie, and challenge him to combat; if the witneſs was vanquiſhed in battle, no other evidence was admitted, and the party by whom he was ſummoned to appear loſt his cauſe. Leg. Baivar. tit. 16. § 2. Leg. Burgund. tit. 45. Beauman. ch. 61. p. 315. The reaſon given for obliging a witneſs to accept of a defiance, and to defend himſelf by combat, is remarkable, and contains the ſame idea which is ſtill the foundation of what is called the point of honour; " for it is juſt, that if any one affirms that he perfectly knows the truth of any thing, and offers to give oath upon it, that he ſhould not heſitate to maintain the veracity of his affirmation in combat." Leg. Burgund. tit. 45.

That the trial by judicial combat was eſtabliſhed in every country of Europe, is a fact well known, and requires no proof. That this mode of deciſion was frequent, appears not only from the codes of ancient laws which eſtabliſhed it, but from the earlieſt writers concerning the practice of law in the different nations of Europe. They treat of this cuſtom at great length; they enumerate the regulations concerning it with minute accuracy; and explain them with much ſolicitude. It made a capital and extenſive article in juriſprudence. There is not any one ſubject in their ſyſtem of law which Beaumanoir, Defontaines, or the compilers of the Aſſiſes de Jeruſalem ſeem to have conſidered as of greater importance; and none on which they have beſtowed ſo much attention. The ſame obſervation will hold with reſpect to the early authors of other nations. It appears from Madox, that trials of this kind were ſo frequent in England, that fines, paid on theſe occaſions, made no inconſiderable branch of the King's revenue. Hiſt. of the Excheq. vol. i. p. 349. A very curious account of a judicial combat between Meſire Robert de Beaumanoir, and Meſire Pierre Tournemine, in preſence of the duke of Bretagne, A. D. 1385, is publiſhed by Morice Mem. pour ſervir de preuves à l'hiſt. de Bretagne, tom. ii. p. 498. All the formalities obſerved in ſuch extraordinary proceedings are there deſcribed more minutely, than in any ancient monument which I have had an opportunity of conſidering. Tournemine was accuſed by Beaumanoir of having murdered

murdered his brother. The former was vanquiſhed, but was ſaved from being hanged upon the ſpot, by the generous interceſſion of his antagoniſt. A good account of the origin of the laws concerning judicial combat, is publiſhed in the hiſtory of of Pavia, by Bernardo Sacci, lib. ix. c. 8. in Græv. Theſ. Antiquit. Ital. vol. iii. 743.

This mode of trial was ſo acceptable, that eccleſiaſticks, notwithſtanding the prohibitions of the church, were conſtrained not only to connive at the practice, but to authorize it. A remarkable inſtance of this is produced by Paſquier Recherches, lib. iv. ch. i. p. 350. The abbot Wittikindus, whoſe words I have produced in this note, conſidered the determination of a point in law by combat, as the beſt and moſt honourable mode of deciſion. In the year 978, a judicial combat was fought in the preſence of the Emperor Henry. The archbiſhop Aldebert adviſed him to terminate a conteſt which had ariſen between two noblemen of his court, by this mode of deciſion. The vanquiſhed combatant, though a perſon of high rank, was beheaded on the ſpot. Chronic. Ditmari Epiſc. Merſb. chez Bouquet Recueil des Hiſt. tom. x. p. 121. Queſtions concerning the property of churches and monaſteries, were decided by combat. In the year 961, a controverſy concerning the church of St. Medard, whether it belonged to the abbey of Beaulieu, was terminated by judicial combat. Bouquet Recueil des Hiſt. tom. ix. p. 729. Ibid. p. 612, &c. The Emperor Henry I.

 declares,

declares, that his law authorising the practice of judicial combats, was enacted with consent and applause of many faithful bishops. Ibid. p. 231. So remarkably did the martial ideas of those ages prevail over the genius and maxims of the canon law, which in other instances had such credit and authority with ecclesiastics. A judicial combat was appointed in Spain, by Charles V. A. D. 1522. The combatants fought in the Emperor's presence, and the battle was conducted with all the rites prescribed by the ancient laws of chivalry. The whole transaction is described at great length by Pontus Heuterus Rer. Austriac. lib. viii. c. 17. p. 205.

The last instance which occurs in the history of France, of a judicial combat authorised by the magistrate, was the famous one between M. Jarnac and M. de la Chaistaignerie, A. D. 1547. A trial by combat was appointed in England, A. D. 1571, under the inspection of the judges in the court of Common Pleas; and though it was not carried to the same extremity with the former, Queen Elizabeth having interposed her authority, and enjoined the parties to compound the matter, yet in order to preserve their honour, the lists were marked out, and all the forms previous to the combat were observed with much ceremony. Spelm. Gloss. voc. *Campus*, p. 103. In the year 1631, a judicial combat was appointed between Donald Lord Rea, and David Ramsay, Esq; by the authority of the Lord

high Conſtable, and Earl Marſhal of England; but that quarrel likewiſe terminated without bloodſhed, being accommodated by Charles I. Another inſtance occurs ſeven years later. Ruſhworth in Obſervations on the Statutes, &c. p. 266.

NOTE XXIII. Sect. I. p. 74. [Z].

The text contains the great outlines which mark the courſe of private and public juriſdiction in the ſeveral nations of Europe. I ſhall here follow more minutely the various ſteps of this progreſs, as the matter is curious and important enough to merit this attention. The payment of a fine by way of ſatisfaction to the perſon or family injured, was the firſt device of a rude people, in order to check the career of private reſentment, and to extinguiſh thoſe *faidæ*, or deadly feuds which were proſecuted among them with the utmoſt violence. This cuſtom may be traced back to the ancient Germans, Tacit. de Morib. Ger. c. 21. and prevailed among other uncivilized nations. Many examples of this are collected by the ingenious and learned author of Hiſtorical Law-Tracts, vol. i. p. 41. Theſe fines were aſcertained and levied in three different manners. At firſt they were ſettled by voluntary agreement between the parties at variance. When their rage began to ſubſide, and they felt the bad effects of their continuing in enmity, they came to terms of concord, and the ſatiſfaction made was called a *compoſition*, implying that it was fixed by mutual conſent. De l'Eſprit des

 Loix,

Loix, lib. xxx. c. 19. It is apparent from ſome of the more ancient codes of laws, that when theſe were compiled, matters ſtill remained in that ſimple ſtate. In certain caſes, the perſon who had committed an offence, was left expoſed to the reſentment of thoſe whom he had injured, until he ſhould recover their favour, quoquo modo potuerit. Lex Friſion. tit. 11. § 1. The next mode of levying theſe fines was by the ſentence of arbiters. An arbiter is called in the Regiam majeſtatem amicabilis compoſitor, lib. xi. c. 4. § 10. He could eſtimate the degree of offence with more impartiality than the parties intereſted, and determine with greater equity what ſatisfaction ought to be demanded. It is difficult to bring an authentic proof of a cuſtom previous to the records preſerved in any nation of Europe. But one of the Formulæ Andegavenſes compiled in the ſixth century, ſeems to allude to a tranſaction carried on not by the authority of a judge, but by the mediation of arbiters. Bouquet Recueil des Hiſtor. tom. iv. p. 566. But as an arbiter wanted authority to enforce his deciſions, judges were appointed with compulſive power to oblige both parties to acquieſce in their deciſions. Previous to this laſt ſtep, the expedient of paying compoſitions was an imperfect remedy againſt the pernicious effects of private reſentment. As ſoon as this important change was introduced, the magiſtrate, putting himſelf in place of the perſon injured, aſcertained the compoſition with which he ought to reſt ſatisfied. Every poſſible

injury

injury that could occur in the courſe of human ſociety, was conſidered and eſtimated, and the compoſitions due to the perſon aggrieved were fixed with ſuch minute attention as diſcovers, in moſt caſes, amazing diſcernment and delicacy, in ſome inſtances, unaccountable caprice. Beſides the compoſition payable to the private party, a certain ſum, called a *fredum*, was paid to the King or ſtate, as Tacitus expreſſes it, or to the fiſcus, in the language of the barbarous laws. Some authors, blending the refined ideas of modern policy with their reaſonings concerning ancient tranſactions, have imagined that the fredum was a compenſation due to the community, on account of the violation of the publick peace. But it is manifeſtly the price paid to the magiſtrate for the protection which he afforded againſt the violence of reſentment. The enacting of this was a conſiderable ſtep towards improvement in criminal juriſprudence. In ſome of the more ancient codes of laws, the *freda* are altogether omitted, or ſo ſeldom mentioned, that it is evident they were but little known. In the latter codes, the fredum is as preciſely ſpecified as the compoſition. In common caſes it was equal to the third part of the compoſition. Capitul. vol. i. p. 52. In ſome extraordinary caſes, where it was more difficult to protect the perſon who had committed violence, the fredum was augmented. Capitul. vol. i. p. 515. Theſe freda made a conſiderable branch in the revenues of the barons; and wherever territorial juriſdiction was granted, the royal judges were prohibited

prohibited from levying any freda. In explaining the nature of the fredum, I have followed, in a great meaſure, the opinion of M. de Monteſquieu, though I know that ſeveral learned antiquarians have taken the word in a different ſenſe. De l'Eſprit des Loix, liv. xxx. c. 20, &c. The great object of judges was to compel the one party to give, and the other to accept the ſatisfaction preſcribed. They multiplied regulations to this purpoſe, and enforced them by grievous penalties. Leg. Longob. lib. i. tit. 9. § 34. Ib. tit. 37. § 1, 2. Capitul. vol. i. p. 371. § 22. The perſon who received a compoſition was obliged to ceaſe from all farther hoſtility, and to confirm his reconciliation with the adverſe party by an oath. Leg. Longob. lib. i. tit. 9. § 8. As an additional and more permanent evidence of reconciliation, he was required to grant a bond of ſecurity to the perſon from whom he received a compoſition, abſolving him from all farther proſecution. Marculfus, and the other collectors of ancient writs, have preſerved ſeveral different forms of ſuch bonds. Marc. lib. xi. § 18. Append. § 23. Form. Sirmondicæ, § 39. The *Letters of Slanes*, known in the law of Scotland, are perfectly ſimilar to theſe bonds of ſecurity. By the letters of Slanes, the heirs and relations of a perſon who had been murdered, bound themſelves, in conſideration of an *Aſſythment* or compoſition paid to them, to forgive, paſs over, and for ever forget, and in oblivion inter all rancour, malice, revenge, prejudice, grudge and reſentment, that they have or may conceive againſt the aggreſſor or his

his posterity, for the crime which he had committed, and discharge him of all action, civil or criminal, against him or his estate, for now and ever. System of Stiles by Dallas of St. Martin's, p. 862. In the ancient form of letters of Slanes, the private party not only forgives and forgets, but pardons and grants remission of the crime. This practice, Dallas, reasoning according to the principles of his own age, considers as an encroachment on the rights of sovereignty, as none, says he, could pardon a criminal but the King. Ibid. But in early and rude times, the prosecution, the punishment, and the pardon of criminals, were all deeds of the private person who was injured. Madox has published two writs, one in the reign of Edward I. the other in the reign of Edward III. by which private persons grant a release or pardon of all trespasses, felonies, robberies, and murders committed. Formul. Anglican. N°. 702, 705. In the last of these instruments, some regard seems to be paid to the rights of the sovereign, for the pardon is granted *en quant que en nous est.* Even after the authority of the magistrate is interposed in punishing criminals, the punishment of criminals is long considered chiefly as a gratification to the resentment of the persons who have been injured. In Persia, a murderer is still delivered to the relations of the person whom he has slain, who put him to death with their own hands. If they refuse to accept of a sum of money as a compensation, the sovereign, absolute as he is, cannot pardon the murderer. Tavernier's Voyages, book v. c. 5 and 10. By a law

law in the kingdom of Aragon as late as the year 1564, the puniſhment of one condemned to death cannot be mitigated but by conſent of the parties who have been injured. Fueros & Obſervancias del Reyno de Aragon, p. 204. 6.

If, after all the engagements to ceaſe from enmity, which I have mentioned, any perſon renewed hoſtilities, and was guilty of any violence, either towards the perſon from whom he had received a compoſition, or towards his relations and heirs, this was deemed a moſt heinous crime, and puniſhed with extraordinary rigour. It was an act of direct rebellion againſt the authority of the magiſtrate, and was repreſſed by the interpoſition of all his power. Leg. Longob. lib. i. tit. 9. § 8, 34. Capit. vol. i. p. 371. § 22. Thus the avenging of injuries was taken out of private hands, a legal compoſition was eſtabliſhed, and peace and amity were reſtored under the inſpection, and by the authority of a judge. It is evident, that at the time when the barbarians ſettled in the provinces of the Roman Empire, they had fixed judges eſtabliſhed among them with compulſive authority. Perſons veſted with this character are mentioned by the earlieſt hiſtorians. Du Cange, voc. *Judices*. The right of territorial juriſdiction was not altogether an uſurpation of the feudal barons. There is good reaſon to believe, that the powerful leaders who ſeized different diſtricts of the countries which they conquered, and kept poſſeſſion of them as *allodial* property, aſſumed at the ſame time the right

right of jurisdiction, and exercised it within their own territories. This jurisdiction was supreme, and extended to all causes. The clearest proofs of this are produced by M. Bouquet. Le Droit publique de France eclairci, &c. tom. i. p. 206, &c. The privilege of judging his own vassals, appears to have been originally a right inherent in every baron who held a fief. As far back as the archives of nations can conduct us with any certainty, we find the jurisdiction and fief united. One of the earliest charters to a layman which I have met with, is that of Ludovicus Pius, A. D. 814. And it contains the right of territorial jurisdiction, in the most express and extensive terms. Capitul. vol. ii. p. 1405. There are many charters to churches and monasteries of a more early date, containing grants of similar jurisdiction, and prohibiting any royal judge to enter the territories of those churches or monasteries, or to perform any act of judicial authority there. Bouquet. Recueil des Hist. tom. iv. p. 628, 631, 633. tom. v. p. 703, 710, 752, 762. Muratori has published many very ancient charters containing the same immunities. Antiq. Ital. Differt. lxx. In most of these deeds, the exacting of *Freda* is particularly prohibited, which shews that they constituted a valuable part of the publick revenue at that juncture. The expence of obtaining a sentence in a court of justice during the middle ages was so considerable, that this circumstance alone was sufficient to render men unwilling to decide any contest in judicial form. It appears from a charter in the thirteenth century,

century, that the baron who had the right of juſtice, received the fifth part of the value of every ſubject, the property of which was tried and determined in his court. If, after the commencement of a law-ſuit, the parties terminated the conteſt in an amicable manner, or by arbitration, they were nevertheleſs bound to pay the fifth part of the ſubject conteſted to the court before which the ſuit had been brought. Hiſt. de Dauphinè. Geneve, 1722. tom. i. p. 22. Similar to this is a regulation in the charter of liberty granted to the town of Friburg, A. D. 1120. If two of the citizens ſhall quarrel, and if one of them ſhall complain to the ſuperior Lord or to his judge, and after commencing the ſuit ſhall be privately reconciled to his adverſary; the judge, if he does not approve of this reconciliation, may compel him to inſiſt in his law-ſuit; and all who were preſent at the reconciliation ſhall forfeit the favour of the ſuperior Lord. Hiſtoria Zaringo Badenſis. Auctor. Jo. Dan. Schoepflinus. Carolſr. 1765. 4to. vol. v. p. 55.

What was the extent of that juriſdiction which thoſe who held fiefs poſſeſſed originally, we cannot now determine with certainty. It is evident that, during the diſorders which prevailed in every kingdom of Europe, the great vaſſals took advantage of the feebleneſs of their Monarchs, and enlarged their juriſdictions to the utmoſt. As early as the tenth century, the more powerful barons had uſurped the right of deciding all

cauſes,

causes, whether civil or criminal. They had acquired the *High Justice* as well as the *Low.* Establ. de St. Louis, lib. i. c. 24, 25. Their sentences were final, and there lay no appeal from them to any superior court. Several striking instances of this are collected by Brussel. Traité des Fiefs, liv. iii. c. 11, 12, 13. Not satisfied with this, the more potent barons got their territories erected into *Regalities,* with almost every royal prerogative and jurisdiction. Instances of these were frequent in France. Bruss. ib. In Scotland, where the power of the feudal nobles became exorbitant, they were very numerous. Historical Law Tracts, vol. i. tract vi. Even in England, though the authority of the Norman Kings circumscribed the jurisdiction of the barons more than in any feudal kingdom, several counties palatine were erected, into which the King's judges could not enter, and no writ could come in the King's name, until it received the seal of the county palatine. Spelman. Gloss. voc. *Comites Palatini*; Blackstone's Commentaries on the Laws of England, vol. iii. p. 78. These lords of regalities had a right to claim or rescue their vassals from the King's judges, if they assumed any jurisdiction over them. Brussel, ubi supra. In the law of Scotland this privilege was termed the right of *repledging*; and the frequency of it not only interrupted the course of justice, but gave rise to great disorders in the exercise of it. Hist. Law Tracts, ib. The jurisdiction of the counties

palatine

palatine was productive of like inconveniencies in England.

The remedies provided by Princes against the bad effects of these usurpations were various, and gradually applied. Under Charlemagne and his immediate descendants, the regal prerogative still retained great vigour, and the *Duces*, *Comites*, and *Missi Dominici*, the former of whom were ordinary and fixed judges, the latter extraordinary and itinerant judges, in the different provinces of their extensive dominions, exercised a jurisdiction co-ordinate with the barons in some cases, and superior to them in others. Du Cange, voc. *Dux*, *Comites* & *Missi*. Murat. Antiq. Differt. viii. & ix. But under the feeble race of Monarchs who succeeded them, the authority of the royal judges declined, and the barons usurped that unlimited jurisdiction which has been described. Louis VI. of France attempted to revive the function of the *Missi Dominici* under the title of *Juges des Exempts*, but the barons were become too powerful to bear such an encroachment on their jurisdiction, and he was obliged to desist from employing them. Henaut. Abregé Chron. tom. ii. p. 730. His successors (as has been observed) had recourse to expedients less alarming. The appeal *de defaute de Droit*, or on account of the refusal of justice, was the first which was attended with any considerable effect. According to the maxims of feudal law, if a baron had not as many vassals as enabled him

him to try by their peers, the parties who offered to plead in his court, or if he delayed or refused to proceed in the trial, the cause might be carried, by appeal, to the court of the superior lord of whom the baron held, and tried there. De l'Esprit des Loix, liv. xxviii. c. 28. Du Cange, voc. *defectus Justitiæ.* The number of Peers or assessors in the courts of Barons was frequently very considerable. It appears from a criminal trial in the court of the viscount de Lautrec, A. D. 1299, that upwards of two hundred persons were present, and assisted in the trial, and voted in passing judgment. Hist. de Langued. par D. D. De Vic & Vaisette, tom. iv. Preuves, p. 114. As the right of jurisdiction had been usurped by many inconsiderable barons, they were often unable to hold courts. This gave frequent occasion to such appeals, and rendered the practice familiar. By degrees, such appeals began to be taken from the courts of the more powerful barons, and it is evident, from a decision recorded by Brussel, that the royal judges were willing to give countenance to any pretext for them. Traité des Fiefs, tom. i. p. 235, 261. This species of appeal had less effect in abridging the jurisdiction of the nobles, than the appeal on account of the injustice of the sentence. When the feudal monarchs were powerful, and their judges possessed extensive authority, such appeals seem to have been frequent. Capitul. vol. i. p. 175, 180; and they were made in a manner suitable to the rudeness of a simple age. The persons aggrieved resorted to the palace

of their ſovereign, and with outcries and loud noiſe called to him for redreſs. Capitul. lib. iii. c. 59. Chronic. Lawterbergienſe ap. Mencken. Script. German. vol. ii. p. 284. b. In the kingdom of Aragon, the appeals to the *Juſtiza* or ſupreme judge were taken in ſuch a form as ſuppoſed the appellant to be in immediate danger of death, or of ſome violent outrage; he ruſhed into the preſence of the judge crying with a loud voice, *Avi*, *Avi*, *Fuerza*, *Fuerza*, thus imploring (as it were) the inſtant interpoſition of that ſupreme judge in order to ſave him. Hier. Blanca Comment. de rebus Aragon. ap. Script. Hiſpanic. Piſtorii, vol. iii. p. 753. The abolition of the trial by combat facilitated the revival of appeals of this kind. The effects of this ſubordination which appeals eſtabliſhed, in introducing attention, equity, and conſiſtency of deciſion into courts of judicature, were ſoon conſpicuous; and almoſt all cauſes of importance were carried to be finally determined in the King's courts. Bruſſel, tom. i. 252. Various circumſtances which contributed towards the introduction and frequency of ſuch appeals are enumerated De l'Eſprit des Loix, liv. xxviii. c. 27. Nothing, however, was of ſuch effect as the attention which monarchs gave to the conſtitution and dignity of their courts of juſtice. It was the ancient cuſtom for the feudal monarchs to preſide themſelves in their courts, and to adminiſter juſtice in perſon. Marculf. lib. i. § 25. Murat. Diſſert. xxxi. Charlemagne, whilſt he was dreſſing, uſed to call parties into his preſence, and

and having heard and confidered the fubject of litigation, gave judgment concerning it. Eginhartus vita Caroli magni cited by Madox Hift. of Exchequer, vol. i. p. 91. This could not fail of rendering their courts refpectable. St. Louis, who encouraged to the utmoft the practice of appeals, revived this ancient cuftom, and adminiftered juftice in perfon with all the ancient fimplicity. "I have often feen the faint," fays Joinville, "fit under the fhade of an oak in the wood of Vincennes, when all who had any complaint, freely approached him. At other times he gave orders to fpread a carpet in a garden, and feating himfelf upon it, heard the caufes that were brought before him." Hift. de St. Louis, p. 13. edit. 1761. Princes of inferior rank, who poffeffed the right of juftice, fometimes difpenfed it in perfon, and prefided in their tribunals. Two inftances of this occur with refpect to the Dauphines of Vienne. Hift. de Dauphinè, tom. i. p. 18. tom. ii. p. 257. But as Kings and Princes could not decide every caufe in perfon, nor bring them all to be determined in the fame court; they appointed *Baillis*, with a right of jurifdiction, in different diftricts of their kingdom. Thefe poffeffed powers fomewhat fimilar to thofe of the ancient *Comites*. It was towards the end of the twelfth century, and beginning of the thirteenth, that this office was firft inftituted in France. Bruffel, liv. ii. c. 35. When the King had a court eftablifhed in different quarters of his dominions, this invited his fubjects to have recourfe to it.

It was the private intereſt of the *Baillis*, as well as an object of publick policy, to extend their juriſdiction. They took advantage of every defect in the rights of the barons, and of every error in their proceedings, to remove cauſes out of their courts, and to bring them under their own cognizance. There was a diſtinction in the feudal law, and an extremely ancient one, between the high juſtice and the low. Capitul. 3. A. D. 812. § 4. A. D. 815. § 3. Eſtabl. de St. Louis, liv. i. c. 40. Many barons poſſeſſed the latter juriſdiction who had no title to the former. The former included the right of trying crimes of every kind, even the higheſt; the latter was confined to petty treſpaſſes. This furniſhed endleſs pretexts for obſtructing, reſtraining and reviewing the proceedings in the baron courts. Ordon. ii. 457. § 25. 458. § 29.——A regulation of greater importance ſucceeded the inſtitution of *Baillis*. The King's ſupreme court or parliament was rendered fixed as to the place, and conſtant as to the time of its meetings. In France, as well as in the other feudal kingdoms, the King's court of juſtice was originally ambulatory, followed the perſon of the monarch, and was held only during ſome of the great feſtivals. Philip Auguſtus, A. D. 1305, rendered it ſedentary at Paris, and continued its terms during the greater part of the year. Paſquier Recherches, liv. ii. c. 2 and 3, &c. Ordon. tom. i. p. 366. § 62. He and his ſucceſſors veſted extenſive powers in that court; they granted the members of it ſeveral privileges and diſtinctions

which it would be tedious to enumerate. Pasquier, ib. Velly hist. de France, tom. vii. p. 307. Persons eminent for integrity and skill in law were appointed judges there. Ib. By degrees the final decision of all causes of importance was brought into the parliament of Paris, and the other parliaments which administered justice in the King's name, in different provinces of the kingdom. This jurisdiction, however, the parliament of Paris acquired very slowly, and the great vassals of the crown made violent efforts in order to obstruct the attempts of this parliament to extend its authority. Towards the close of the thirteenth century, Philip the Fair was obliged to prohibit his parliament from taking cognizance of certain appeals brought into it from the courts of the Count of Bretagne, and to recognize his right of supreme and final jurisdiction. Memoires pour servir de Preuves à l'Histoire de Bretagne par Morice, tom. i. p. 1037. 1074. Charles VI. at the end of the following century was obliged to confirm the rights of the Dukes of Bretagne in more ample form. Ibid. tom. ii. p. 580, 581. So violent was the opposition of the barons to this right of appeal which they considered as fatal to their privileges and power, that the authors of the *Encyclopedie* have mentioned several instances in which barons put to death, or mutilated, or confiscated the goods of such as ventured to appeal from the sentences pronounced in their courts, to the parliament of Paris, tom. xii. Art. *Parlement*, p. 25.

The progreſs of juriſdiction in the other feudal kingdoms was in a great meaſure ſimilar to that which we have traced in France. In England, the territorial juriſdiction of the barons was both ancient and extenſive. Leg. Edw. Conf. N° 5 and 9. After the Norman conqueſt it became more ſtrictly feudal; and it is evident from facts recorded in the Engliſh hiſtory, as well as from the inſtitution of Counties Palatine, which I have already mentioned, that the uſurpations of the nobles in England were not inferior to thoſe of their contemporaries on the continent. The ſame expedients were employed to circumſcribe or aboliſh thoſe dangerous juriſdictions. William the Conqueror eſtabliſhed a conſtant court in the hall of his palace; from which the four courts now entruſted with the adminiſtration of juſtice in England took their riſe. Henry II. divided his kingdom into ſix circuits, and ſent itinerant judges to hold their courts in them at ſtated ſeaſons. Blackſtone's Commentaries on the Laws of England, vol. iii. 57. Juſtices of peace were appointed in every county by ſubſequent monarchs; to whoſe juriſdiction the people gradually had recourſe in many civil cauſes. The privileges of the Counties Palatine were gradually limited; with reſpect to ſome points they were aboliſhed; and the adminiſtration of juſtice was brought into the King's courts, or before judges of his appointment. The ſeveral ſteps taken for this purpoſe are enumerated in Dalrymple's Hiſtory of Feudal Property, chap. vii.

In Scotland the usurpations of the nobility were more exorbitant than in any other feudal kingdom. The progress of their encroachments, and the methods taken by the crown to limit or abolish their territorial and independent jurisdictions, both which I had occasion to consider and explain in a former work, differed very little from those of which I have now given the detail. History of Scotland, vol. i. p. 45.

I should perplex myself and my readers in the labyrinth of German jurisprudence, were I to attempt to delineate the progress of jurisdiction in the Empire, with a minute accuracy. It is sufficient to observe, that the authority which the Aulick council and Imperial chamber now possess, took its rise from the same abuse of territorial jurisdiction, and was acquired in the same manner that the royal courts attained influence in other countries. All the important facts with respect to both these particulars, may be found in Phil. Datt. de pace publica Imperii, lib. iv. The capital articles are pointed out in Pfeffel Abregé de l'Histoire & Droit publique d'Allemagne, p. 556, 581; and in Traité du Droit publique de l'Empire par M. le Coq. de Villeray. Both the two last treatises are of great authority, having been composed under the eye of M. Schoepflin of Strasburgh, one of the ablest publick lawyers in Germany.

NOTE XXIV. Sect. I. p. 78. [AA].

It is not easy to fix with precision the period at which Ecclesiasticks first began to claim exemption from the civil jurisdiction. It is certain, that during the early and purest ages of the church, they pretended to no such immunity. The authority of the civil magistrate extended to all persons, and to all causes. This fact has not only been clearly established by Protestant authors, but is admitted by many Roman Catholicks of eminence, and particularly by the writers in defence of the liberties of the Gallican church. There are several original papers published by Muratori, which shew that, in the ninth and tenth centuries, causes of the greatest importance relating to ecclesiasticks were still determined by civil judges. Antiq. Ital. vol. v. dissert. lxx. Proofs of this are produced likewise by M. Howard, Anciennes Loix des François, &c. vol. i. p. 209. Ecclesiasticks did not shake off all at once their subjection to civil courts. This privilege, like their other usurpations, was gained slowly, and step by step. This exemption seems at first to have been merely an act of complaisance, flowing from veneration for their character. Thus from a charter of Charlemagne in favour of the church of Mans, A. D. 796, to which M. l'Abbe de Foy refers in his Notice de Diplomes, tom. i. p. 201, that monarch directs his judges, if any difference should arise between the administrators of the revenues

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of that church and any perſon whatever, not to ſummon the adminiſtrators to appear in mallo publico; but firſt of all to meet with them, and to endeavour to accommodate the difference in an amicable manner. This indulgence was in proceſs of time improved into a legal exemption; which was founded on the ſame ſuperſtitious reſpect of the laity for the clerical character and function. A remarkable inſtance of this occurs in a charter of Frederick Barbaroſſa, A. D. 1172, to the monaſtery of Altenburg. He grants them judicium non tantum ſanguinolentis plagæ, ſed vitæ & mortis; he prohibits any of the royal judges from diſturbing their juriſdiction; and the reaſon which he gives for this ample conceſſion is, nam quorum, ex Dei gratia, ratione divini miniſterii onus leve eſt, & jugum ſuave; nos penitus nolumus illius oppreſſionis contumelia, vel manu Laica fatigari. Mencken. Script. rer. Germ. vol. iii. p. 1067.

It is not neceſſary for illuſtrating what is contained in the text, that I ſhould deſcribe the manner in which the code of the canon law was compiled, and ſhew that the doctrines in it moſt favourable to the power of the clergy, are founded on ignorance, or ſupported by fraud and forgery. The reader will find a full account of theſe in Gerard. Van Maſtricht, Hiſtoria Juris Eccleſiaſtici, & in Science de Government par M. Real, tom. vii. c. 1. & 3. § 2, 3, &c. The hiſtory of the progreſs and extent of eccleſiaſtical juriſdiction, with an

an account of the arts which the clergy employed in order to draw causes of every kind into the spiritual courts, is no less curious, and would throw great light upon many of the customs and institutions of the dark ages; but it is likewise foreign from the present subject. Du Cange in his Glossary, voc. *Curia Christianitatis*, has collected most of the causes with respect to which the clergy arrogated an exclusive jurisdiction, and refers to the authors, or original papers, which confirm his observations. Giannonè in his Civil History of Naples, lib. xix. § 3. has ranged these under proper heads, and scrutinizes the pretensions of the church with his usual boldness and discernment. M. Fleury observes, that the clergy multiplied, at such a rate, the pretexts for extending the authority of the spiritual courts, that it was in their power to withdraw every person and every cause from the jurisdiction of the civil magistrate. Hist. Eccles. tom. xix. Disc. Prelim. 16. But how ill founded soever the jurisdiction of the clergy may be, or whatever might be the abuses to which their manner of exercising it gave rise, the principles and forms of their jurisprudence were far more perfect than that which was known in the civil courts. It is probable that ecclesiasticks never submitted, during any period of the middle ages, to the laws contained in the codes of the barbarous nations, but were governed entirely by the Roman law. They regulated all their transactions by such of its maxims as were preserved

preserved by tradition, or were contained in the Theodosian code, and other books extant among them. This we learn from a custom which prevailed universally in those ages. Every person was permitted to chuse among the various codes of laws then in force, that to which he was willing to conform. In any transaction of importance, it was usual for the persons contracting to mention the law to which they submitted, that it might be known how any controversy that should arise between them was to be decided. Innumerable proofs of this occur in the charters of the middle ages. But the clergy considered it as such a valuable privilege of their order to be governed by the Roman law, that when any person entered into holy orders, it was usual for him to renounce the laws to which he had been formerly subject, and to declare that he now submitted to the Roman law. Constat me Johannem clericum, filium quondam Verandi, qui professus sum, ex natione mea, lege vivere Langobardorum, sed tamen, pro honore ecclesiastico, lege nunc videor vivere Romana. Charta, A. D. 1072. Farulfus presbyter qui professus sum, more sacerdotii mei, lege vivere Romana. Charta, A. D. 1075. Muratori Antichita Estensi. vol. i. p. 78. See likewise Houard Anciennes Loix des François, &c. vol. i. p. 203.

The code of the canon law began to be compiled early in the ninth century. Mem. de l'Acad. des Inscript. tom. xviii. p. 346, &c. It was above two centuries after that before any collection was made

made of thofe cuftoms, which were the rule of judgment in the courts of the barons. Spiritual judges decided, of courfe, according to written and known laws; Lay judges, left without any fixed guide, were directed by loofe traditionary cuftoms. But befides this general advantage of the canon law, its forms and principles were more confonant to reafon, and more favourable to the equitable decifion of every point in controverfy, than thofe which prevailed in lay courts. It appears from Notes XXI. and XXII. concerning private wars, and the trial by combat, that the whole fpirit of ecclefiaftical jurifprudence was adverfe to thefe fanguinary cuftoms which were deftructive of juftice; and the whole force of ecclefiaftical authority was exerted to abolifh them, and to fubftitute trials by law and evidence in their room. Almoft all the forms in lay courts which contribute to eftablifh, and continue to preferve order in judicial proceedings, are borrowed from the canon law. Fleury Inftit. du droit canon. part iii. c. 6. p. 52. St. Louis in his Eftabliffemens confirms many of his new regulations concerning property, and the administration of juftice, by the authority of the canon law, from which he borrowed them. Thus, for inftance, the firft hint of attaching moveables for the recovery of a debt, was taken from the canon law. Eftabl. liv. ii. c. 21 and 40. And likewife the ceffio bonorum, by a perfon who was infolvent. Ibid. In the fame manner, he eftablifhed new regulations with refpect to the effects of perfons dying inteftate, liv. i. c. 89. Thefe

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and many other ſalutary regulations, the Canoniſts borrowed from the Roman law. Many other examples might be produced of more perfect juriſprudence in the canon law than was known in lay courts. For that reaſon it was deemed an high privilege to be ſubject to eccleſiaſtical juriſdiction. Among the many immunities, by which men were allured to engage in the dangerous expeditions for the recovery of the Holy Land, one of the moſt conſiderable was the declaring thoſe who took the Croſs to be ſubject only to the ſpiritual courts. See Note XIII. and Du Cange, voc. *crucis privilegia.*

NOTE XXV. Sect. I. p. 80. [BB].

The rapidity with which the knowledge and ſtudy of the Roman law ſpread over Europe, is amazing. The copy of the Pandects was found at Amalphi, A. D. 1137. Irnerius opened a college of civil law at Bologne a few years after. Giann. Hiſt. book xi. c. 2. It began to be taught as a part of academical learning in different parts of France before the middle of the century. Vaccarius gave lectures on the civil law at Oxford, as early as the year 1147. A regular ſyſtem of feudal law, formed plainly in imitation of the Roman code, was compoſed by two Milaneſe lawyers about the year 1150. Gratian publiſhed the code of canon law, with large additions and emendations, about the ſame time. The earlieſt collection of theſe cuſtoms, which ſerved as the rules of deciſion in the courts of juſtice, is the *Aſſiſes de Jeruſalem.*

Jerusalem. They were compiled, as the preamble informs us, in the year 1099, and are called Jus Consuetudinarium quo regebatur regnum orientale. Willerm. Tyr. lib. xix. c. 2. But peculiar circumstances were the occasion of this early compilation. The victorious Crusaders settled as a colony in a foreign country, and adventurers from all the different nations of Europe composed this new society. It was necessary on that account to ascertain the laws and customs which were to regulate the transactions of business, and the administration of justice among them. But there was at that time no collection of customs, and no attempt to render law fixed in any country of Europe. The first undertaking of that kind was by Glanville, Lord Chief Justice of England, in his Tractatus de Legibus & Consuetudinibus Angliæ, composed about the year 1181. The Regiam Majestatem in Scotland, ascribed to David I. seems to be an imitation, and a servile one of Glanville. Pierre de Fontaines, who tells us that he was the first who had attempted such a work in France, composed his *Conseil*, which contains an account of the customs of the country of Vermandois, in the reign of St. Louis, which began A. D. 1226. *Beaumanoir*, the author of the *Coustumes de Beauvoisis*, lived about the same time. The Establissemens of St. Louis, containing a large collection of the customs which prevailed within the royal domains, were published by the authority of that monarch. As soon as men became acquainted with the advantages of having written customs and laws

laws to which they could have recourſe on every occaſion, the method of collecting them became common. Charles VII. of France, by an ordonance, A. D. 1453, appointed the cuſtomary laws in every province of France to be collected and arranged. Velley and Villaret. Hiſtoire, tom. xvi. p. 113. His ſucceſſor, Louis XI. renewed the injunction. But this ſalutary undertaking hath never been fully executed, and the French juriſprudence remains more obſcure and uncertain than if theſe prudent regulations of their monarchs had taken effect. A practice was eſtabliſhed in the middle ages, which affords the cleareſt proof that judges, while they had no other rule to direct their decrees but unwritten and traditionary cuſtoms, were often at a loſs how to find out the facts and principles, according to which they were bound to decide. They were obliged in dubious caſes to call a certain number of old men, and to lay the caſe before them, that they might inform them what was the practice or cuſtom with regard to the point. This was called *Enqueſte par tourbe.* Du Cange, voc. *Turba.* The effects of the revival of the Roman juriſprudence have been explained by M. de Monteſquieu, liv. xxviii. c. 42, and by Mr. Hume, Hiſt. of England, vol. ii. p. 441. I have adopted many of their ideas. Who can pretend to review any ſubject which ſuch writers have conſidered, without receiving from them light and information? At the ſame time I am convinced that the knowledge of the Roman law was not ſo entirely loſt in Europe during the middle ages, as is commonly

monly believed. My ſubject does not require me to examine this point. Many ſtriking facts with regard to it are collected by Donato Antonio d'Aſti Dall' Uſo e autorita della ragione civilè nelle provincie dell' Imperio Occidentale. Nap. 1751. 2 vol. 8vo.

THAT the civil law is intimately connected with the municipal juriſprudence in ſeveral countries of Europe, is a fact ſo well known, that it needs no illuſtration. Even in England, where the common law is ſuppoſed to form a ſyſtem perfectly diſtinct from the Roman code, and although thoſe who apply in that country to the ſtudy of the common law boaſt, with affectation, of this diſtinction, it is evident that many of the ideas and maxims of the civil law are incorporated into the Engliſh juriſprudence. This is well illuſtrated by the ingenious and learned author of Obſervations on the Statutes, chiefly the more ancient. 2d edit. p. 66.

NOTE XXVI. SECT. I. p. 82. [CC].

THE whole hiſtory of the middle ages makes it evident, that war was the ſole profeſſion of gentlemen, and the only ſubject attended to in their education. Even after ſome change in manners began to take place, and the civil arts of life had acquired ſome reputation, the ancient ideas with reſpect to the accompliſhments neceſſary for a perſon of noble birth, continued long in force. In the Memoirs de Fleuranges, p. 9, &c. we have an

account

account of the youthful exercises and occupations of Francis I. and they are altogether martial and athletic. That father of letters owed his relish for them, not to education, but to his own good sense, and good taste. The manners of the superior order of ecclesiastics during the middle ages, furnish the strongest proof that the distinction of professions was hardly known in Europe. The functions and character of the clergy are obviously very different from those of laymen; and among the inferior orders of churchmen, this constituted a distinct character, separate from that of their citizens. But the dignified ecclesiastics, who were frequently of noble birth, were above such a distinction; they retained the idea of what belonged to them as gentlemen, and in spite of the decrees of Popes, or the canons of councils, they bore arms, led their vassals to the field, and fought at their head in battle. Among them the priesthood was scarcely a separate profession; the military accomplishments which they thought essential to them as gentlemen, were cultivated; the theological science, and pacific virtues suitable to their spiritual function, were neglected and despised.

As soon as the science of law became a laborious study, and the practice of it a separate profession, such as rose to eminence in it obtained honours formerly appropriated to soldiers. Knighthood was the most illustrious mark of distinction during several ages, and conferred privileges to which rank or birth alone were not entitled. To this

high dignity persons eminent for their knowledge of law were advanced, and by that, were placed on a level with those whom their military talents had rendered conspicuous. *Miles Justitiæ*, *Miles Literatus* became common titles. Matthew Paris mentions such knights as early as A. D. 1251. If a judge attained a certain rank in the courts of justice, that alone gave him a right to the honour of knighthood. Pasquier Recherches, liv. xi. c. 16. p. 130. Dissertations historiques sur la Chevalerie par Honorè de Sainte Marie, p. 164, &c. A profession which led to offices that ennobled such as held them, grew into credit, and the people of Europe became accustomed to see men rise to eminence by civil as well as military talents.

NOTE XXVII. Sect. I. p. 86. [DD].

The chief intention of these notes, was to bring at once under the view of my readers, such facts and circumstances as tend to illustrate or confirm what is contained in that part of the history to which they refer. When these lay scattered in many different authors, and were taken from books not generally known, or which it would be disagreeable to consult, I thought it would be of advantage to collect them together. But when every thing necessary for the proof or illustration of my narrative or reasonings may be found in any one book which is generally known, or deserves to be so, I shall satisfy myself with referring to it. This is the case with respect to Chivalry. Almost every

fact which I have mentioned in the text, together with many other curious and instructive particulars concerning this singular institution, may be found in Memoires sur l'ancienne Chevalerie considerée comme un establissement politique & militaire, par M. de la Curne de St. Palaye.

NOTE XXVIII. Sect. III. p. 91. [EE].

The subject of my enquiries does not call me to write a history of the progress of science. The facts and observations which I have produced, are sufficient to illustrate the effects of its progress upon manners and the state of society. While science was altogether extinct in the western parts of Europe, it was cultivated in Constantinople and other parts of the Grecian Empire. But the subtile genius of the Greeks turned almost entirely to theological disputation. The Latins borrowed that spirit from them, and many of the controversies which still occupy, and divide theologians, took their rise among the Greeks, from whom the other Europeans derived a considerable part of their knowledge. See the testimony of Æneas Sylvius ap. Conringium de antiq. academicis, p. 43. Histoire literaire de France, tom. vii. p. 113, &c. tom. ix. p. 151, &c. Soon after the Empire of the Caliphs was established in the East, some illustrious Princes arose among them, who encouraged science. But when the Arabians turned their attention to the literature cultivated by the ancient Greeks and Romans, the chaste and correct taste of their

their works of genius appeared frigid and unanimated to a people of a more warm imagination. It was impoſſible for them to admire the poets and hiſtorians of Athens, or of Rome. But they were ſenſible of the merit of their philoſophers. The operations of the intellect are more fixed and uniform than thoſe of the fancy or taſte. Truth makes an impreſſion nearly the ſame in every place; the ideas of what is beautiful, elegant, or ſublime, vary in different climates. The Arabians, though they neglected Homer, tranſlated the moſt eminent of the Greek philoſophers into their own language; and, guided by their precepts and diſcoveries, applied themſelves with great ardour to the ſtudy of geometry, aſtronomy, medicine, dialectics and metaphyſics. In the three former they made conſiderable and uſeful improvements, which have contributed not a little to advance thoſe ſciences to that high degree of perfection which they have attained. In the two latter, they choſe Ariſtotle for their guide, and refining on the ſubtle and diſtinguiſhing ſpirit which characterizes his philoſophy, they rendered it altogether frivolous or unintelligible. The ſchools eſtabliſhed in the Eaſt for teaching and cultivating theſe ſciences, were in high reputation. They communicated their love of ſcience to their countrymen, who conquered Aſia and Spain; and the ſchools inſtituted there were little inferior in fame to thoſe in the Eaſt. Many of the perſons who diſtinguiſhed themſelves by their proficiency in ſcience

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in the twelfth and thirteenth centuries, were educated among the Arabians. Bruckerus collects many inftances of this, Hiftor. Philof. v. iii. p. 681, &c. Almoft all the men eminent for fcience during feveral centuries, were inftructed in the fciences by the Arabians. The firft knowledge of the Ariftotelian philofophy in the middle ages, was acquired by tranflations of his works out of the Arabick. The Arabian commentators were deemed the moft fkilful and authentic guides in the ftudy of his fyftem. Conring. antiq. acad. Diff. iii. p. 95, &c. Supplem. p. 241, &c. Murat. antiquit. Ital. vol. iii. p. 932, &c. From them the Schoolmen derived the genius and principles of their philofophy, which contributed fo much to retard the progrefs of true fcience.

The eftablifhment of Colleges or Univerfities is a remarkable æra in literary hiftory. The fchools in cathedrals and monafteries confined themfelves chiefly to the teaching of grammar. There were only one or two mafters employed in that office. But in colleges, profeffors were appointed to teach all the different parts of fcience. The time that ought to be allotted to the ftudy of each was afcertained. A regular form of trying the proficiency of ftudents was prefcribed; and academical titles and honours were conferred on fuch as acquitted themfelves with approbation. A good account of the origin and nature of thefe is given by Seb. Bacmeifterus Antiquitates Roftochienfes, five, Hiftoria Urbis & Academiæ Roftoch.

ap. Monumenta inedita Rer. Germ. per E. J. de Westphalen, vol. iii. p. 781. Lipf. 1743. The first obscure mention of these academical degrees in the University of Paris (from which the other universities in Europe have borrowed most of their customs and institutions) occurs A. D. 1215. Crevier hist. de l'univ. de Paris, tom. i. p. 296, &c. They were completely established A. D. 1231. Ib. 248. It is unnecessary to enumerate the several privileges to which batchelors, masters, and doctors were entitled. One circumstance is sufficient to demonstrate the high degree of estimation in which they were held. Doctors in the different faculties contended with knights for precedence, and the dispute was terminated in many instances by advancing the former to the dignity of knighthood, the high prerogatives of which I have mentioned. It was even asserted, that a doctor had a right to that title without creation. Bartolus taught——doctorem actualiter regentem in jure civili per decennium effici militem ipso facto. Honorè de St. Marie Dissert. p. 165. This was called Chevalerie de lectures, and the persons advanced to that dignity, milites Clerici. These new establishments for education, together with the extraordinary honours conferred on learned men, greatly encreased the number of scholars. In the year 1262, there were ten thousand students in the university of Bologna; and it appears from the history of that university, that law was the only science taught in it at that time. In the year 1340, there were thirty thousand in the university

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of Oxford. Speed's Chron. ap. Anderſon's Chronol. Deduction of Commerce, vol. i. p. 172. In the ſame century, ten thouſand perſons voted in a queſtion agitated in the univerſity of Paris; and as graduates alone were admitted to that privilege, the number of ſtudents muſt have been vaſtly great. Velly Hiſt. de France, tom. xi. p. 147. There were indeed few univerſities in Europe at that time; but ſuch a number of ſtudents may neverthelefs be produced as a proof of the extraordinary ardour with which men turned to the ſtudy of ſcience in thoſe ages; it ſhows likewiſe that they already began to conſider other profeſſions than that of a ſoldier as honourable and uſeful.

NOTE XXIX. Sect. I. p. 93. [FF].

The great variety of ſubjects which I have endeavoured to illuſtrate, and the extent of this upon which I now enter, will juſtify my adopting the words of M. de Monteſquieu, when he begins to treat of commerce. "The ſubject which fol-" lows would require to be diſcuſſed more at" large; but the nature of this work does not" permit it. I wiſh to glide on a tranquil ſtream;" but I am hurried along by a torrent."

Many proofs occur in hiſtory of the little intercourſe between nations during the middle ages. Towards the cloſe of the tenth century, Count Bouchard intending to found a monaſtery at St. Maur des Foſſes, near Paris, applied to an abbot

of Clugny in Burgundy, famous for his ſanctity; intreating him to conduct the monks thither. The language in which he addreſſed that holy man is ſingular: He tells him, that he had undertaken the labour of ſuch a great journey; that he was fatigued with the length of it, therefore hoped to obtain his requeſt, and that his journey into ſuch a diſtant country ſhould not be in vain. The anſwer of the abbot is ſtill more extraordinary: He refuſed to comply with his deſire, as it would be extremely fatiguing to go along with him into a ſtrange and unknown region. Vita Burchardi venerabilis Comitis ap. Bouquet Rec. des Hiſt. vol. x. p. 351. Even ſo late as the beginning of the twelfth century, the monks of Ferrieres in the dioceſe of Sens did not know that there was ſuch a city as Tournay in Flanders; and the monks of St. Martin of Tournay were equally unacquainted with the ſituation of Ferrieres. A tranſaction in which they were both concerned, made it neceſſary for them to have ſome intercourſe. The mutual intereſt of both monaſteries prompted each to find out the ſituation of the other. After a long ſearch, which is particularly deſcribed, the diſcovery was made by accident. Herimannus Abbas de Reſtauratione St. Martini Tornacenſis ap. Dacher. Spicel. vol. xii. p. 400. The ignorance of the middle ages with reſpect to the ſituation and geography of remote countries was ſtill more remarkable. The moſt ancient geographical chart which now remains as a monument of the ſtate of that ſcience in Europe during the middle

ages,

ages, is found in a manuſcript of the Chronique de St. Denys. There the three parts of the earth then known are ſo repreſented, that Jeruſalem is placed in the middle of the globe, and Alexandria appears to be as near to it as Nazareth. Mem. de l'Acad. des Belles Lettres, tom. xvi. p. 185. There ſeem to have been no inns or houſes of entertainment for the reception of travellers during the middle ages. Murat. Antiq. Ital. vol. iii. p. 581, &c. This is a proof of the little intercourſe which took place between different nations. Among people whoſe manners are ſimple, and who are ſeldom viſited by ſtrangers, hoſpitality is a virtue of the firſt rank. This duty of hoſpitality was ſo neceſſary in that ſtate of ſociety which took place during the middle ages, that it was not conſidered as one of thoſe virtues which men may practiſe or not, according to the temper of their minds, and the generoſity of their hearts. Hoſpitality was enforced by ſtatutes, and ſuch as neglected this duty were liable to puniſhment. Quicumque hoſpiti venienti lectum, aut focum negaverit, trium ſolidorum inlatione mulctetur, Leg. Burgund. tit. xxxviii. § 1. Si quis homini aliquo pergenti in itinere manſionem vetaverit ſexaginta ſolidos componat in publico. Capitul. lib. vi. § 82. This increaſe of the penalty, at a period ſo long after that in which the laws of the Burgundians were publiſhed, and when the ſtate of ſociety was much improved, is very remarkable. Other laws of the ſame purport are collected by Jo. Fred. Polac Syſtema Juriſprud. Germanicæ,

manicæ, Lipſ. 1733. p. 75. The laws of the Slavi were more rigorous than any that he mentions; they ordained, "that the moveables of an inhoſpitable perſon ſhould be confiſcated, and his houſe burnt. They were even ſo ſolicitous for the entertainment of ſtrangers, that they permitted the landlord to ſteal for the ſupport of his gueſt." Quod noctu furatus fueris, cras appone, hoſpitibus. Rerum Mecleburgicar. lib. viii. a Mat. Jo. Beehr. Lipſ. 1751. p. 50. In conſequence of theſe laws, or of that ſtate of ſociety which made it proper to enact them, hoſpitality abounded while the intercourſe among men was inconſiderable, and ſecured the ſtranger a kind reception under every roof where he choſe to take ſhelter. This, too, proves clearly, that the intercourſe among men was rare, for as ſoon as this increaſed, what was a pleaſure became a burden, and the entertaining of travellers was converted into a branch of commerce.

But the laws of the middle ages afford a proof ſtill more convincing of the ſmall intercourſe between different nations. The genius of the Feudal ſyſtem, as well as the ſpirit of jealouſy which always accompanies ignorance, concurred in diſcouraging ſtrangers from ſettling in any country. If a perſon removed from one province in a kingdom to another, he was bound within a year and a day to acknowledge himſelf the vaſſal of the baron in whoſe eſtate he ſettled; if he neglected

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to do ſo, he became liable to a penalty; and if at his death he neglected to leave a certain legacy to the baron within whoſe territories he reſided, all his goods were confiſcated. The hardſhips impoſed on foreigners ſettling in a ſtrange country, were ſtill more intolerable. In more early times, the ſuperior lord of any territory in which a foreigner ſettled, might ſeize his perſon, and reduce him to ſervitude. Very ſtriking inſtances of this occur in the hiſtory of the middle ages. The cruel depredations of the Normans in the ninth century, obliged many inhabitants of the maritime provinces of France to fly into the interior parts of the kingdom. But inſtead of being received with that humanity to which their wretched condition entitled them, they were reduced to a ſtate of ſervitude. Both the civil and eccleſiaſtical powers found it neceſſary to interpoſe, in order to put a ſtop to this barbarous practice. Potgieſſer. de Statu Servor. lib. i. c. 1. § 16. In other countries, the laws permitted the inhabitants of the maritime provinces to reduce ſuch as were ſhipwrecked on their coaſt to ſervitude. Ibid. § 17. This barbarous cuſtom prevailed in other countries of Europe. The practice of ſeizing the goods of perſons who had been ſhipwrecked, and of confiſcating them as the property of the lord on whoſe manor they were thrown, ſeems to have been univerſal. De Weſtphalen Monum. inedita Rer. Germ. vol. iv. p. 907, &c. et Du Cange, voc. *Laganum*, Beehr. Rer. Mecleb. lib. p. 512. Among the ancient Welſh, three ſorts of perſons, a madman,

man, a ſtranger, and a leper, might be killed with impunity. Leges Hoel Dda, quoted in Obſervat. on the Statutes, chiefly the more ancient, p. 22. M. de Lauriere produces ſeveral ancient deeds which prove that in different provinces of France, ſtrangers became the ſlaves of the lord on whoſe lands they ſettled. Gloſſaire du Droit François, Art. *Aubaine*, p. 92. Beaumanoir ſays, " that there are ſeveral places in France, in which if a ſtranger fixes his reſidence for a year and day, he becomes the ſlave of the lord of the manor." Couſt. de Beauv. ch. 45. p. 254. As a practice ſo contrary to humanity could not ſubſiſt, the ſuperior lords found it neceſſary to reſt ſatisfied with levying certain annual taxes from aliens, or impoſing upon them ſome extraordinary duties or ſervices. But when any ſtranger died, he could not convey his effects by a will; and all his real as well as perſonal eſtate fell to the King, or to the lord of the barony, to the excluſion of his natural heirs. This is termed in France Droit d'Aubaine. Pref. de Laurier. Ordon. tom. i. p. 15. Bruſſel. tom. ii. p. 944. Du Cange, voc. *Albani*. Paſquier Recherches, p. 367. This practice of confiſcating the effects of ſtrangers upon their death was very ancient. It is mentioned, though very obſcurely, in a law of Charlemagne, A. D. 813. Capitul. Baluz. p. 507. § 5. Not only perſons who were born in a foreign country were ſubject to the Droit d'Aubaine, but in ſome countries ſuch as removed from one dioceſe to another, or from the lands of one baron to another. Bruſſel. vol. ii. p. 947.

p. 947, 949. It is ſcarcely poſſible to conceive any law more unfavourable to the intercourſe between nations. Something ſimilar to it, however, may be found in the ancient laws of every kingdom in Europe. With reſpect to Italy, ſee Murat. Ant. vol. ii. p. 14. It is no ſmall diſgrace to the French juriſprudence, that this barbarous, inhoſpitable cuſtom, ſhould ſtill remain in a nation ſo highly civilized.

The confuſion and outrage which abounded under a feeble form of government, incapable of framing or executing ſalutary laws, rendered the communication between the different provinces of the ſame kingdom extremely dangerous. It appears from a letter of Lupus, abbot of Ferrieres, in the ninth century, that the highways were ſo much infeſted by banditti, that it was neceſſary for travellers to form themſelves into companies or caravans, that they might be ſafe from the aſſaults of robbers. Bouquet Recueil des Hiſt. vol. vii. 515. The numerous regulations publiſhed by Charles the Bald in the ſame century, diſcover the frequency of theſe diſorders; and ſuch acts of violence were become ſo common, that by many they were hardly conſidered as criminal. For this reaſon the inferior judges called Centenarii were required to take an oath, that they would neither commit any robbery themſelves, nor protect ſuch as were guilty of that crime. Capitul. edit. Baluz. vol. ii. p. 63, 68. The hiſtorians of the ninth and tenth centuries

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give pathetic descriptions of these disorders. Some remarkable passages to this purpose are collected by Mat. Jo. Beerh Rer. Mecleb. lib. viii. p. 603. They became so frequent and audacious, that the authority of the civil magistrate was unable to repress them. The ecclesiastical jurisdiction was called in to aid it. Councils were held with great solemnity, the bodies of the saints were brought thither, and in presence of their sacred reliques, anathemas were denounced against robbers, and other violators of the publick peace. Bouquet Recueil des Hist. tom. x. p. 360, 431, 536. One of these forms of excommunication issued A. D. 988, is still preserved, and is so singular, and composed with eloquence of such a peculiar kind, that it will not perhaps be deemed unworthy of a place here. After the usual introduction, and mentioning the outrage which gave occasion to the anathema, it runs thus; "Obtenebrescant oculi vestri, qui concupiverunt; arescant manus, quæ rapuerunt; debilitentur omnia membra, quæ adjuverunt. Semper laboretis, nec requiem inveniatis, fructuque vestri laboris privemini. Formidetis, & paveatis, à facie persequentis, & non persequentis hostis, ut tabescendo deficiatis. Sit portio vestra cum Juda traditore Domini, in terra mortis et tenebrarum; donec corda vestra ad satisfactionem plenam convertantur.——Ne cessent a vobis hæ maledictiones, scelerum vestrorum persecutrices, quamdiu permanebitis in peccato pervasionis. Amen. Fiat, Fiat." Bouquet. Ib. p. 517.

NOTE XXX. Sect. I. p. 98. [GG].

With reſpect to the progreſs of commerce which I have deſcribed, p. 78, &c. it may be obſerved that the Italian ſtates carried on ſome commerce with the cities of the Greek empire, as early as the age of Charlemagne, and imported into their own country the rich commodities of the eaſt. Murat. Antiq. Ital. vol. ii. p. 882. In the tenth century, the Venetians had opened a trade with Alexandria in Egypt. Ibid. The inhabitants of Amalphi and Piſa had likewiſe extended their trade to the ſame ports. Murat. Ib. p. 884, 885. The effects of the Cruſades in increaſing the wealth and commerce of the Italian ſtates, and particularly that which they carried on with the Eaſt, I have explained page 34th of this volume. They not only imported the Indian commodities from the Eaſt, but eſtabliſhed manufactures of curious fabric in their own country. Several of theſe are enumerated by Muratori in his Diſſertations concerning the *arts* and the *weaving* of the middle ages. Antiq. Ital. vol. ii. p. 349, 399. They made great progreſs, particularly in the manufacture of ſilk, which had long been peculiar to the eaſtern provinces of Aſia. Silk ſtuffs were of ſuch high price in ancient Rome, that only a few perſons of the firſt rank were able to purchaſe them. Under Aurelian, A. D. 270, a pound of ſilk was equal in value to a pound of gold. Abſit ut auro fila penſentur. Libra enim auri tunc libra ſerici fuit. Vopiſcus in Aureliano. Juſtinian,

Juſtinian, in the ſixth century, introduced the art of rearing ſilk-worms into Greece, which rendered the commodity ſomewhat more plentiful, though ſtill it was of ſuch great value, as to remain an article of luxury or magnificence, reſerved only for perſons of the firſt order, or for publick ſolemnities. Roger I. King of Sicily, about the year 1130, carried off a number of artificers in the ſilk trade from Athens, and ſettling them in Palermo, introduced the culture of ſilk into his kingdom, from which it was communicated to other parts of Italy. Gianon. Hiſt. of Naples, b. xi. c. 7. This ſeems to have rendered ſilk ſo common, that about the middle of the fourteenth century, a thouſand citizens of Genoa appeared in one proceſſion clad in ſilk robes. Sugar is likewiſe a production of the Eaſt. Some plants of the ſugar-cane were brought from Aſia; and the firſt attempt to cultivate them in Sicily was made about the middle of the twelfth century. From thence they were tranſplanted into the ſouthern provinces of Spain. From Spain they were carried to the Canary and Madeira iſles, and at length into the new world. Ludovico Guicciardini, in enumerating the goods imported into Antwerp, about the year 1560, mentions the ſugar which they received from Spain and Portugal as a conſiderable article. He deſcribes that as the product of the Madeira and Canary iſlands. Deſcritt. de Paeſi Baſſi, p. 180. 181. The ſugar-cane was either not introduced into the Weſt-Indies at that time, or the cultivation of it was

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not ſo conſiderable as to furniſh an article in commerce. In the middle ages, though ſugar was not raiſed in ſuch quantities, or employed for ſo many purpoſes, as to become one of the common neceſſaries of life, it appears to have been a conſiderable article in the commerce of the Italian ſtates.

These various commodities with which the Italians furniſhed the other nations of Europe, procured them a favourable reception in every kingdom. They were eſtabliſhed in France in the thirteenth century with moſt extenſive immunities. They not only obtained every indulgence favourable to their commerce, but perſonal rights and privileges were granted to them, which the natives of the kingdom did not enjoy. Ordon. tom. iv. p. 668. By a ſpecial proviſo, they were exempted from the droit d'aubaine. Ibid. p. 670. As the Lombards engroſſed the trade of every kingdom in which they ſettled, they became maſters of its caſh. Money of courſe was in their hands not only a ſign of the value of their commodities, but became an object of commerce itſelf. They dealt largely as bankers. In an ordonance, A. D. 1295, we find them ſtiled *mercatores* and *campſores*. They carried on this as well as other branches of their commerce with ſomewhat of that rapacious ſpirit which is natural to monopolizers, who are not reſtrained by the concurrence of rivals. An abſurd opinion, which prevailed in the middle ages, was, however, in ſome meaſure, the cauſe of their exorbitant demands, and may be pleaded in apology

for them. Commerce cannot be carried on with advantage, unleſs the perſons who lend a ſum are allowed a certain premium for the uſe of their money, and as a compenſation for the riſk which they run in permitting another to traffick with their ſtock. This premium is fixed by law in all commercial countries, and is called the legal intereſt of money. But the Fathers of the church preposterouſly applied the prohibitions of uſury in ſcripture to the payment of legal intereſt, and condemned it as a ſin. The ſchoolmen, miſled by Ariſtotle, whoſe ſentiments they followed implicitly, and without examination, adopted the ſame error, and enforced it. Blackſtone's Commentaries on the laws of England, vol. ii. p. 455. Thus the Lombards found themſelves engaged in a traffick which was deemed criminal and odious. They were liable to puniſhment if detected. They were not ſatisfied, therefore, with that moderate premium, which they might have claimed if their trade had been open and authoriſed by law. They exacted a ſum proportional to the danger and infamy of a diſcovery. Accordingly, we find that it was uſual for them to demand twenty per cent. for the uſe of money in the thirteenth century. Murat. Antiq. Ital. vol. i. p. 893. About the beginning of that century, the Counteſs of Flanders was obliged to borrow money in order to pay her huſband's ranſom. She procured the ſum requiſite, either from Italian merchants or from Jews. The loweſt intereſt which ſhe paid to them was above twenty per cent. and ſome of

them exacted near thirty. Martene and Durand. Thesaur. Anecdotorum. vol. i. p. 886. In the fourteenth century, A. D. 1311, Philip IV. fixed the interest which might be legally exacted in the fairs of Champagne at twenty per cent. Ordonan. tom. i. p. 484. The interest of money in Aragon was somewhat lower. James I. A. D. 1242, fixed it by law at eighteen per cent. Petr. de Marca. *Marca* sive Limes Hispan. app. 1433. As late as the year 1490, it appears that the interest of money in Placentia, was at the rate of forty per cent. This is the more extraordinary, because at that time the commerce of the Italian States was become considerable. Memorie Storiche de Piacenza, tom. viii. p. 104. Piac. 1760. It appears from Lud. Guicciardini, that Charles V. had fixed the rate of interest in his dominions in the Low-Countries at twelve per cent. and at the time when he wrote about the year 1560, it was not uncommon to exact more than that sum. He complains of this as exorbitant, and points out its bad effects both on agriculture and commerce. Descritt. di Paesi Bassi, p. 172. This high interest of money, is alone a proof that the profits on commerce were exorbitant.—The Lombards were likewise established in England in the thirteenth century, and a considerable street in the city of London still bears their name. They enjoyed great privileges, and carried on an extensive commerce, particularly as bankers. See Anderson's Chronol. Deduction, vol. i. p. 137, 160, 204, 231, where the statutes or other authorities which confirm this are quoted.

But the chief mart for Italian commodities was at Bruges. Navigation was then ſo imperfect, that a voyage between the Baltick and Mediterranean could not be performed in one ſummer. For that reaſon, a magazine or ſtorehouſe half way between the commercial cities in the north, and thoſe in Italy, became neceſſary. Bruges was pitched upon as the moſt convenient ſtation. That choice introduced vaſt wealth into the Low-Countries. Bruges was at once the ſtaple for Engliſh wool; for the woollen and linen manufactures of the Netherlands; for the naval ſtores, and other bulky commodities of the North; and for the Indian commodities, as well as domeſtick productions imported by the Italian States. The extent of its commerce in Indian goods with Venice alone, appears from one fact. In the year 1318, five Venetian galeaſſes laden with Indian commodities arrived at Bruges, in order to diſpoſe of their cargoes at the fair. Theſe galeaſſes were veſſels of very conſiderable burden. L. Guic. Deſcritt. di Paeſi Baſſi, p. 174. Bruges was the greateſt emporium in all Europe. Many proofs of this occur in the hiſtorians and records of the thirteenth and fourteenth centuries. But inſtead of multiplying quotations, I ſhall refer my readers to Anderſon, vol. i. p. 12, 137, 213, 246, &c. The nature of this work prevents me from entering into any long details, but there are ſome detached facts, which give an high idea of the wealth both of the Flemiſh and Italian commercial ſtates. The Duke of Brabant contracted his daughter to the Black Prince,

Prince, ſon of Edward III. of England, A. D. 1339, and gave her a portion which would amount to three hundred thouſand pounds of our preſent money. Rymer's Fædera, vol. v. p. 113. John Galeazzo Viſconti Duke of Milan concluded a treaty of marriage between his daughter and Lionel Duke of Clarence, Edward's third ſon, A. D. 1367, and granted her a portion equal to two hundred thouſand pounds of our preſent money. Rymer Fæder. vol. vi. p. 547. Theſe exorbitant ſums ſo far exceeding what was then granted by the moſt powerful monarchs, and which appear extraordinary even in the preſent age, when the wealth of Europe is ſo much increaſed, muſt have ariſen from the riches which flowed into theſe countries from their extenſive and lucrative commerce. The firſt ſource of wealth to the towns ſituated on the Baltick ſea, ſeems to have been the herring-fiſhery; the ſhoals of herring frequenting at that time the coaſts of Sweden and Denmark, in the ſame manner as they now reſort to the Britiſh coaſts. The effects of this fiſhery are thus deſcribed by an author of the thirteenth century. The Danes, ſays he, who were formerly clad in the poor garb of ſailors, are now cloathed in ſcarlet, purple and fine linen. For they abound with wealth flowing from their annual fiſhery on the coaſt of Schonen; ſo that all nations reſort to them, bringing their gold, ſilver and precious commodities, that they may purchaſe herrings, which the divine bounty beſtows upon them. Arnoldus Lubecenſis ap. Conring. de Urbib. German. § 87.

The Hanseatick league is the most powerful commercial confederacy known in history. Its origin towards the close of the twelfth century, and the objects of its union, are described by Knipscildt Tractatus Historico-Politico Juridicus de Juribus Civitat. Imper. lib. i. cap. 4. Anderson has mentioned the chief facts with respect to their commercial progress, the extent of the privileges which they obtained in different countries, their successful wars with several monarchs, as well as the spirit and zeal with which they contended for those liberties and rights without which it is impossible to carry on commerce to advantage. The vigorous efforts of a society of merchants attentive only to commercial objects, could not fail of diffusing new and more liberal ideas concerning justice and order in every country of Europe where they settled.

In England, the progress of commerce was extremely slow; and the causes of this are obvious. During the Saxon heptarchy, England, split into many petty kingdoms, which were perpetually at variance with each other, exposed to the fierce incursions of the Danes, and other northern pirates, and sunk in barbarity and ignorance, was in no condition to cultivate commerce, or to pursue any system of useful and salutary policy. When a better prospect began to open by the union of the kingdom under one monarch, the Norman conquest took place. This occasioned such a violent shock, and such a sudden and total revolution of property, that the nation did not recover from it

during ſeveral reigns. By the time that the conſtitution began to acquire ſome ſtability, and the Engliſh had ſo incorporated with their conquerors as to become one people, the nation engaged with no leſs ardour than imprudence in ſupport of their monarch's pretenſions to the crown of France, and long waſted its vigour and genius in its wild efforts to conquer that kingdom. When by ill ſucceſs, and repeated diſappointments, a period was at laſt put to this fatal frenzy, and the nation beginning to enjoy ſome repoſe, had leiſure to breathe and to gather new ſtrength, the deſtructive wars between the houſes of York and Lancaſter broke out, and involved the kingdom in the worſt of all calamities. Thus, beſides the common obſtructions of commerce occaſioned by the nature of the feudal government, and the ſtate of manners during the middle ages, its progreſs in England was retarded by peculiar cauſes. Such a ſucceſſion of events adverſe to the commercial ſpirit was ſufficient to have checked its growth, although every other circumſtance had favoured it. The Engliſh were accordingly one of the laſt nations in Europe who availed themſelves of their natural commercial advantages. Before the reign of Edward III. all the wool of England, except a ſmall quantity wrought into coarſe cloths for home conſumption, was ſold to the Flemings or Lombards, and manufactured by them. Though Edward, A. D. 1326, began to allure ſome of the Flemiſh weavers to ſettle in England, it was long before the Engliſh were ca-

pable of fabricating cloth for foreign markets, and the export of unwrought wool ſtill continued to be the chief article of their commerce. Anderſon paſſim.—All foreign commodities were brought into England by the Lombard or Hanſeatick merchants. The Engliſh ports were frequented by ſhips both from the north and ſouth of Europe, and they tamely allowed foreigners to reap all the profits ariſing from the ſupply of their wants. The firſt commercial treaty of England on record, is that with Haquin King of Norway, A. D. 1217. Anderſ. vol. i. p. 108. But they did not venture to trade in their own ſhips to the Baltick until the beginning of the fourteenth century. Ib. 151. It was after the middle of the fifteenth, before they ſent any ſhip into the Mediterranean. Ib. p. 177. Nor was it long before this period that their veſſels viſited the ports of Spain or Portugal. But though I have pointed out the ſlow progreſs of the Engliſh commerce as a fact little attended to, and yet meriting conſideration; the concourſe of foreigners to the ports of England, together with the communication among all the different countries in Europe, which went on increaſing from the beginning of the twelfth century, is ſufficient to juſtify all the obſervations and reaſonings in the text concerning the influence of commerce on the ſtate of manners, and of ſociety.

NOTE XXXI. SECT. III. p. 183. [HH].

I HAVE not been able to diſcover the preciſe manner in which the Juſtiza was appointed. Among the

the claims of the *junta* or *union* formed againſt James I. A. D. 1264, this was one; that the King ſhould not nominate any perſon to be Juſtiza, without the conſent or approbation of the ricos-hombres or nobles. Zurita Anales de Aragon, vol. i. p. 180. But the King in his anſwer to their remonſtrance aſſerts, "that it was eſtabliſhed by immemorial practice, and was conformable to the laws of the kingdom, that the King, in virtue of his royal prerogative, ſhould name the Juſtiza." Zurita, Ibid. 181. Blanca, 656. From another paſſage in Zurita, it appears, that while the Aragoneſe enjoyed the privilege of *the union*, i. e. the power of confederating againſt their ſovereign as often as they conceived that he had violated any of their rights and immunities, the Juſtiza was not only nominated by the King, but held his office during the King's pleaſure. Nor was this practice attended with any bad effects, as the privilege of the union was a ſufficient and effectual check to any abuſe of the royal prerogative. But when the privilege of the union was aboliſhed as dangerous to the order and peace of ſociety, it was agreed that the Juſtiza ſhould continue in office during life. Several Kings, however, attempted to remove the Juſtizas who were obnoxious to them, and they ſometimes ſucceeded in the attempt. In order to guard againſt this encroachment, which would have deſtroyed the intention of the inſtitution, and have rendered the Juſtiza the dependant and tool of the crown, inſtead of the guardian

dian of the people, a law was enacted in the Cortes, A. D. 1442, ordaining that the Justiza should continue in office during life, and should not be removed from it unless by the authority of the Cortes. Fueros & Observancial del Reyno de Arag. lib. i. p. 22. By former laws the person of the Justiza had been declared sacred, and he was responsible only to the Cortes. Ibid. p. 15. b. Zurita and Blanca, who both published their histories while the Justiza of Aragon retained the full exercise of his privileges and jurisdiction, have neglected to explain several circumstances with regard to the office of that respectable magistrate, because they addressed their works to their countrymen, who who were well acquainted with every particular concerning the functions of a judge, to whom they looked up as to the guardian of their liberties. It is vain to consult the later historians of Spain, about any point, with respect to which the excellent historians whom I have named are silent. The ancient constitution of their country was overturned, and despotism established on the ruin of its liberties, when the writers of this and the preceding century composed their histories, and on that account they had little curiosity to know the nature of those institutions to which their ancestors owed the enjoyment of freedom, or they were afraid to describe them with much accuracy. The spirit with which Mariana, his continuator Miniana, and Ferreras, write their histories, is very different from that of the two historians of Aragon, from whom

I have

I have taken my account of the conſtitution of that kingdom.

Two circumſtances concerning the Juſtiza, beſides thoſe which I have mentioned in the text, are worthy of obſervation, 1. None of the ricos-hombres, or noblemen of the firſt order, could be appointed Juſtiza. He was taken out of the ſecond claſs or cavalleros, who anſwer nearly to gentlemen or commoners in Great Britain. Fueros & Obſervanc. del Reyno, &c. lib. 1. p. 21. b. The reaſon was. By the laws of Aragon, the ricos-hombres were not ſubject to capital puniſhment; but as it was neceſſary for the ſecurity of liberty, that the Juſtiza ſhould be accountable for the manner in which he executed the high truſt repoſed in him, it was a powerful reſtraint upon him to know that he was liable to be puniſhed with the utmoſt rigour. Blanca, p. 657, 756. Zurita, tom. ii. 229. Fueros & Obſervanc. lib. ix. p. 182. b. 183. It appears too from many paſſages in Zurita, that the Juſtiza was appointed to check the domineering and oppreſſive ſpirit of the nobles, as well as to ſet bounds to the power of the monarch, and therefore he was choſen from an order of citizens equally intereſted in oppoſing both.

2. A MAGISTRATE poſſeſſed of ſuch vaſt powers as the Juſtiza, might have exerciſed them in a manner pernicious to the ſtate, if he himſelf had been ſubject to no controul. A conſtitutional

remedy, however, was provided againſt this danger. Seventeen perſons were choſen by lot in each meeting of the Cortes. Theſe formed a tribunal called the court of inquiſition into the office of Juſtiza. This court met at three ſtated terms in each year. Every perſon had liberty of complaining to it of any iniquity or neglect of duty in the Juſtiza, or in the inferior judges, who acted in his name. The Juſtiza and his deputies were called to anſwer for their conduct. The members of the court paſſed ſentence by ballot. They might puniſh by degradation, confiſcation of goods, or even with death. The law which erected this court, and regulated the forms of its procedure, was enacted A. D. 1461. Zurita Anales, iv. 102. Blanca Comment. Rer. Aragon. 770. Previous to this period, inquiry was made into the conduct of the Juſtiza, though not with the ſame formality. He was from the firſt inſtitution of the office ſubject to the review of the Cortes. The conſtant dread of ſuch an impartial and ſevere inquiry into his behaviour, was a powerful motive to the vigilant and faithful diſcharge of his duty. A remarkable inſtance of the authority of the Juſtiza when oppoſed to that of the King, occurs in the year 1386. By the conſtitution of Aragon, the eldeſt ſon or heir apparent of the crown poſſeſſed conſiderable power and juriſdiction in the kingdom. Fueros & Obſervan. del Reyno de Arag. lib. i. p. 16. Peter IV. inſtigated by a ſecond wife, attempted to deprive his ſon of this, and enjoined his ſubjects to yield him no obedience.

dience. The Prince immediately applied to the Juſtiza; "the ſafe-guard and defence, ſays Zurita, againſt all violence and oppreſſion." The Juſtiza granted him the *firmo de derecho*, the effect of which was, that upon his giving ſurety to appear in judgment, he could not be deprived of any immunity or privilege, which he poſſeſſed, but in conſequence of a legal trial before the Juſtiza, and of a ſentence pronounced by him. This was publiſhed throughout the kingdom, and notwithſtanding the proclamation in contradiction to this which had been iſſued by the King, the Prince continued in the exerciſe of all his rights, and his authority was univerſally recognized. Zurita Anales de Aragon, tom. ii. 385.

NOTE XXXII. Sect. III. p. 184. [II].

I have been induced, by the concurring teſtimony of many reſpectable authors, to mention this as the conſtitutional form of the oath of allegiance, which the Aragoneſe ſwore to their Sovereigns. I muſt acknowledge, however, that I have not found this ſingular oath in any Spaniſh author whom I have had an opportunity to conſult. It is mentioned neither by Zurita, nor Blanca, nor Argenſola, nor Sayas, who were all hiſtoriographers appointed by the Cortes of Aragon to record the tranſactions of the kingdom. All theſe writers poſſeſs a merit, which is very rare among hiſtorians. They are extremely accurate in tracing the progreſs of the laws and conſtitu-

tion of their country. Their ſilence with reſpect to this, creates ſome ſuſpicion concerning the genuineneſs of the oath. But as it is mentioned by ſo many authors, who produce the ancient Spaniſh words in which it is expreſſed, it is probable that they have taken it from ſome writer of credit, whoſe works have not fallen into my hands. The ſpirit of the oath is perfectly agreeable to the genius of the Aragoneſe conſtitution. Since the publication of the firſt edition, the learned M. Totze, Profeſſor of Hiſtory at Batzow in the Dutchy of Mecklenburgh, has been ſo good as to point out to me a Spaniſh author of great authority, who has publiſhed the words of this oath. It is Antonio Perez, ſecretary to the Philip II. a native of Aragon. The words of the oath are, "Nos, que valemos tanto como vos, os hazemos nueſtro Rey y Señor, con tal que nos guandeys nueſtros fueros, y libertades, y ſi No, No. Las Obras y Relaciones de Ant. Perez. 8vo. par Juan de la Planche 1631. p. 143."

The privilege of Union, which I have mentioned in the preceding note, and alluded to in the next, is indeed one of the moſt ſingular which could take place in a regular government, and the oath that I have mentioned expreſſes nothing more than this conſtitutional privilege entitled the Aragoneſe to perform. If the King or his miniſters violated any of the laws or immunities of the Aragoneſe, and did not grant immediate redreſs in conſequence of their repreſentations and remonſtrances,

remonſtrances, the nobles of the firſt rank, or *Ricos-hombres de natura, & de meſnada*, the equeſtrian order, or the nobility of the ſecond claſs, called *Hidalgos & Infanciones*, together with the magiſtrates of cities, might, either in the Cortes, or in a voluntary aſſembly, join in union, and binding themſelves by mutual oaths and the exchange of hoſtages to be faithful to each other, they might require the King, in the name and by the authority of his body corporate, to grant them redreſs. If the King refuſed to comply with their requeſt, or took arms in order to oppoſe them, they might, in virtue of the privilege of union, inſtantly withdraw their allegiance from the King, refuſe to acknowledge him as their Sovereign, and proceed to elect another Monarch; nor did they incur any guilt, or become liable to any proſecution on that account. Blanca Com. Rer. Arag. 661, 669. This union did not reſemble the confederacies in other feudal kingdoms. It was a conſtitutional aſſociation, which pretended to legal privileges, which iſſued its mandates under a common ſeal, and proceeded in all its operations by regular and aſcertained forms. This dangerous right was not only claimed, but exerciſed. In the year 1287, the Aragoneſe formed an union in oppoſition to Alfonſo III. and obliged the King not only to comply with their demands, but to ratify a privilege ſo fatal to the power of the crown. Zurita Anales, tom. i. p. 322. In the year 1347, an union was formed againſt Peter IV. with equal ſucceſs,

ſucceſs, and a new ratification of the privilege was extorted. Zurita, tom. ii. p. 202. But ſoon after, the King having defeated the leaders of the union in battle, the privilege of union was finally abrogated in the Cortes, and all the laws or records which contained any confirmation of it, were cancelled or deſtroyed. The King, in preſence of the Cortes, called for the act whereby he had ratified the union, and having wounded his hand with his poniard, he held it above the record, "That privilege, ſays he, which has been "ſo fatal to the kingdom, and ſo injurious to "royalty, ſhould be effaced with the blood of a "King." Zurita, tom. ii. p. 229. The law aboliſhing the union is publiſhed. Fueros & Obſervanc. lib. ix. p. 178. From that period the Juſtiza became the conſtitutional guardian of publick liberty, and his power and juriſdiction occaſioned none of thoſe violent convulſions which the tumultuary privilege of the union was apt to produce. The conſtitution of Aragon, however, ſtill remained extremely free. One ſource of this liberty was from the early admiſſion of the repreſentatives of cities into the Cortes. It ſeems probable, from Zurita, that burgeſſes were conſtituent members of the Cortes from its firſt inſtitution. He mentions a meeting of Cortes, A. D. 1133, in which the *procuradores de las ciudades y villas* were preſent. Tom. i. p. 51. This is the conſtitutional language in which their preſence is declared in the Cortes, after the journals of that court

were

were regularly kept. It is probable, that an historian so accurate as Zurita, would not have used these words, if he had not taken them from some authentick record. It was more than a century after this period before the representatives of cities formed a constituent part in the supreme assemblies of the other European nations. The free spirit of the Aragonese government is conspicuous in many particulars. The Cortes not only opposed the attempts of their Kings to increase their revenue, or to extend their prerogative, but they claimed rights and exercised powers which will appear extraordinary even in a country accustomed to the enjoyment of liberty. In the year 1286, the Cortes claimed the privilege of naming the members of the King's council and the officers of his household, and they seem to have obtained it for some time. Zurita, tom. i. p. 303, 307. It was the privilege of the Cortes to name the officers who commanded the troops raised by their authority. This seems to be evident from a passage in Zurita. When the Cortes, in the year 1503, raised a body of troops to be employed in Italy, it passed an act empowering the King to name the officers who should command them. Zurita, tom. v. p. 274; which plainly implies that without this warrant, it did not belong to him in virtue of his prerogative. In the Fueros & Observancias del Reyno de Aragon, two general declarations of the rights and privileges of the Aragonese are published; the one in the reign of Pedro I. A. D. 1283, the other in that of James II. A. D. 1325.

They are of ſuch length, that I cannot inſert them, but it is evident from theſe, that not only the privileges of the nobility, but the rights of the people, perſonal as well as political, were, at that period, more extenſive, and better underſtood than in any kingdom in Europe. Lib. i. p. 7, 9. The oath by which the King bound himſelf to obſerve thoſe rights and liberties of the people, was very ſolemn. Ibid. p. 14. b. & p. 15. The Cortes of Aragon diſcovered not only the jealouſy and vigilance, which are peculiar to free ſtates, in guarding the eſſential parts of the conſtitution, but they were ſcrupulouſly attentive to obſerve the moſt minute forms and ceremonies to which they were accuſtomed. According to the eſtabliſhed laws and cuſtoms of Aragon, no foreigner had liberty to enter the hall in which the Cortes aſſembled. Ferdinand, in the year 1481, appointed his Queen, Iſabella, regent of the kingdom, while he was abſent during the courſe of the campaign. The law required that a regent ſhould take the oath of fidelity in preſence of the Cortes; but as Iſabella was a foreigner, before ſhe could be admitted, the Cortes thought it neceſſary to paſs an act authorizing the ſerjeant-porter to open the door of the hall, and to allow her to enter; "ſo attentive were they, ſays Zurita, to obſerve "their laws and forms, even ſuch as may ſeem "moſt minute." Tom. iv. p. 313.

The Aragoneſe were no leſs ſolicitous to ſecure the perſonal rights of individuals, than to maintain

tain the freedom of the conſtitution; and the ſpirit of their ſtatutes with reſpect to both was equally liberal. Two facts relative to this matter merit obſervation. By an expreſs ſtatute in the year 1325, it was declared to be unlawful to put any native Aragoneſe to the torture. If he could not be convicted by the teſtimony of witneſſes, he was inſtantly abſolved. Zurita, tom. ii. p. 66. Zurita records the regulation with the ſatisfaction natural to an hiſtorian, when he contemplates the humanity of his countrymen. He compares the laws of Aragon to thoſe of Rome, as both exempted citizens and freemen from ſuch ignominious and cruel treatment, and had recourſe to it only in the trial of ſlaves. Zurita had reaſon to beſtow ſuch an encomium on the laws of his country. Torture was at that time permitted by the laws of every other nation in Europe. Even in England, from which the mild ſpirit of legiſlation has long baniſhed it, torture was not, at that time, unknown. Obſervations on the Statutes, chiefly the more ancient, &c. p. 66.

THE other fact ſhows, that the ſame ſpirit which influenced the legiſlature prevailed among the people. In the year 1485, the religious zeal of Ferdinand and Iſabella prompted them to introduce the inquiſition into Aragon. Though the Aragoneſe were no leſs ſuperſtitiouſly attached than the other Spaniards to the Roman Catholick faith, and no leſs deſirous to root out the ſeeds

of error and of heresy which he Jews and Moors had ſcattered, yet they took arms againſt the inquiſitors, murdered the chief inquiſitor, and long oppoſed the eſtabliſhment of that tribunal. The reaſon which they gave for their conduct was, That the mode of trial in the inquiſition was inconſiſtent with liberty. The criminal was not confronted with the witneſſes, he was not acquainted with what they depoſed againſt him, he was ſubjected to torture, and the goods of perſons condemned were confiſcated. Zurita Anales, tom. iv. p. 341.

THE form of government in the kingdom of Valencia, and principality of Catalonia, which were annexed to the crown of Aragon, was likewiſe extremely favourable to liberty. The Valencians enjoyed the privilege of *union* in the ſame manner with the Aragoneſe. But they had no magiſtrate reſembling the Juſtiza. The Catalonians were no leſs jealous of their liberties than the two other nations, and no leſs bold in aſſerting them. But it is not neceſſary for illuſtrating the following hiſtory to enter into any farther detail concerning the peculiarities in the conſtitution of theſe kingdoms.

NOTE XXXIII. SECT. III. p. 185. [KK].

I HAVE ſearched in vain among the hiſtorians of Caſtile for ſuch information as might enable me to trace the progreſs of laws and government in

in Caſtile, or to explain the nature of the conſtitution with the ſame degree of accuracy wherewith I have deſcribed the political ſtate of Aragon. It is manifeſt not only from the hiſtorians of Caſtile, but from its ancient laws, particularly the Fuero Juzgo, that its monarchs were originally elective. Ley 2, 5, 8. They were choſen by the biſhops, the nobility, and the people, ibid. It appears from the ſame venerable code of laws, that the prerogative of the Caſtilian monarchs was extremely limited. Villaldiego, in his commentary on theſe laws, produces many facts and authorities in confirmation of both theſe particulars. Dr. Geddes, who was well acquainted with Spaniſh literature, complains that he could find no author, who gave a diſtinct account of the Cortes or ſupreme aſſembly of the nation, or who deſcribed the manner in which it was held, or mentioned the preciſe number of members who had a right to ſit in it. He produces, however, from Gil Gonzales d'Avila, who publiſhed a hiſtory of Henry II, the writ of ſummons to the town of Abula, requiring it to chuſe repreſentatives to appear in the Cortes which he called to meet A. D. 1390. From this we learn, that Prelates, Dukes, Marquiſſes, the maſters of the three military orders, Conde's and Riccos-hombres were required to attend. Theſe compoſed the bodies of eccleſiaſticks and nobles, which formed two members of the legiſlature. The cities which ſent members to that meeting of the Cortes were forty-eight. The number of repreſentatives, (for the cities had

right to chuſe more or fewer according to their reſpective dignity) amounted to an hundred and twenty-five. Geddes Miſcellaneous Tracts, vol. i. 331. Zurita having occaſion to mention the Cortes which Ferdinand held at Toro A. D. 1505, in order to ſecure to himſelf the government of Caſtile after the death of Iſabella, records, with his uſual accuracy, the names of the members preſent, and of the cities which they repreſented. From that liſt it appears, that only eighteen cities had deputies in this aſſembly. Anales de Aragon, tom. vi. p. 3. What was the occaſion of this great difference in the number of cities repreſented in theſe two meetings of the Cortes, I am unable to explain.

NOTE XXXIV. Sect. III. p. 187. [LL].

A great part of the territory in Spain was engroſſed by the nobility. L. Marinæus Siculus, who compoſed his treatiſe de Rebus Hiſpaniæ during the reign of Charles V. gives a catalogue of the Spaniſh nobility, together with the yearly rent of their eſtates. According to his account, which he affirms was as accurate as the nature of the ſubject would admit, the ſum total of the annual revenue of their lands amounted to one million four hundred and eighty-two thouſand ducats. If we make allowance for the vaſt difference in the value of money in the fifteenth century from that which it now bears, and conſider that the catalogue of Marinæus includes only the *Titulados*, or nobility

nobility whoſe families were diſtinguiſhed by ſome honorary title, their wealth muſt appear very great. L. Marinæus ap. Schotti Scriptores Hiſpan. vol. i. p. 323. The Commons of Caſtile, in their conteſts with the crown, which I ſhall hereafter relate, complain of the extenſive property of the nobility as extremely pernicious to the kingdom. In one of their manifeſto's they aſſert that from Valladolid to St. Jago in Galicia, which was an hundred leagues, the crown did not poſſeſs more than three villages. All the reſt belonged to the nobility, and could be ſubjected to no publick burden. Sandov. Vida del Emperor. Carl. V. vol. i. p. 422. It appears from the teſtimony of authors quoted by Bovadilla, that theſe vaſt poſſeſſions were beſtowed upon the *Ricos-hombres*, *hidalgos*, and *cavalleros* by the Kings of Caſtile, in reward for the aſſiſtance which they had received from them in expelling the Moors. They likewiſe obtained by the ſame means a conſiderable influence in the cities, many of which anciently depended upon the nobility. Politica para Corregidores. Amb. 1750. fol. vol. i. 440, 442.

NOTE XXXV. Sect. III. p. 190. [MM].

I have been able to diſcover nothing certain, as I obſerved Note XVIII. with reſpect to the origin of communities or free cities in Spain. It is probable, that as ſoon as theſe were recovered from the Moors, the inhabitants who fixed their reſidence in them, being perſons of diſtinction and

 credit,

credit, had all the privileges of municipal government and jurisdiction conferred upon them. Many striking proofs occur of the splendour, wealth and power of the Spanish cities. Hieronymus Paulus wrote a description of Barcelona in the year 1491, and compares the dimensions of the town to that of Naples, and the elegance of its buildings, the variety of its manufactures, and the extent of its commerce to Florence. Hieron. Paulus ap. Scottum. Script. Hisp. ii. 844. Marinæus describes Toledo as a large and populous city. A great number of its inhabitants were persons of quality and of illustrious rank. Its commerce was great. It applied particularly to the manufactures of silk and wool; and the number of inhabitants employed in these two branches of trade amounted nearly to ten thousand. Marin. ubi supr. p. 308. I know no city, says he, that I would prefer to Valladolid for elegance and splendour. Ibid. p. 312. We may form some estimate of its populousness from the following circumstances. The citizens having taken arms in the year 1516, in order to oppose a measure concerted by cardinal Ximenes, they mustered in the city, and in the territory which belonged to it, thirty thousand fighting men. Sandov. Vida del Emper. Carl. V. tom. i. p. 81. The manufactures carried on in the towns of Spain were not intended merely for home consumption, they were exported to foreign countries, and that commerce was a considerable source of wealth to the inhabitants. The maritime laws of Barcelona are the foundation of mercantile

jurisprudence

jurisprudence in modern times, as the Leges Rhodiæ were among the ancients. All the commercial states in Italy adopted these laws, and regulated their trade according to them. Sandi Storia Civile Veneziana, Vol. ii. 865. It appears from several ordonances of the Kings of France, that the merchants of Aragon and Castile were received on the same footing, and admitted to the same privileges with those of Italy. Ordonances des Roys, &c. tom. ii. p. 135, iii. 166, 504, 635. Cities in such a flourishing state became a respectable part of the society, and were entitled to a considerable share in the legislature. The magistrates of Barcelona aspired to the highest honour a Spanish subject can enjoy, that of being covered in the presence of their sovereign, and of being treated as grandees of the kingdom. Origin de la dignidad de Grande de Castilla por Don Alonso Carillo. Madr. 1657. p. 18.

NOTE XXXVI. Sect. III. p. 193. [NN].

The military order of St. Jago, the most honourable and opulent of the three Spanish orders, was instituted about the year 1170. The bull of confirmation by Alexander III. is dated A. D. 1176. At that time a considerable part of Spain was subject to the Moors, and the whole country much exposed to the depredations not only of the enemy, but of banditti. It is no wonder, then, that an institution, the object of which was to oppose the enemies of the Christian faith, and to restrain

restrain and punish those who disturbed the publick peace, should be extremely popular, and meet with general encouragement. The wealth and power of the order became so great, that one historian says, that the Grand Master of St. Jago was the person in Spain of greatest power and dignity next to the King. Æl. Anton. Nebrissensis, ap. Schott. Scrip. Hisp. i. 812. Another observes, that the order possessed every thing in Castile that a King would most desire to obtain. Zurita Anales, v. 22. The knights took the vows of obedience, of poverty, and of conjugal chastity. By the former they were bound implicitly to obey the commands of their grand master. The order could bring into the field a thousand men at arms. Æl. Ant. Nebres. p. 813. If these men at arms were accompanied as was usual in that age, this was a formidable body of cavalry. There belonged to this order eighty-four commanderies, and two hundred priories and other benefices. Dissertations sur la Chevalerie par Hon. de St. Marie, p. 262. It is easy to see how formidable to his sovereign the command of these troops, the administration of such revenues, and the disposal of so many offices, must have rendered a subject. The other two orders, though inferior to that of St. Jago in power and wealth, were nevertheless very considerable. When the conquest of Granada deprived the knights of St. Jago of those enemies against whom their zeal was originally directed, superstition found out a new object, in

defence

defence of which they engaged to employ their courage. To their uſual oath, they added the following clauſe: "We do ſwear to believe, to maintain, and to contend in publick and in private, that the Virgin Mary, the mother of God, our Lady, was conceived without the ſtain of original ſin." This ſingular addition was made about the middle of the ſeventeenth century. Honorè de St. Marie Diſſertations, &c. p. 263.

NOTE XXXVII. Sect. III. p. 196. [OO].

I have frequently had occaſion to take notice of the defects in police during the middle ages, occaſioned by the feebleneſs of government, and the want of proper ſubordination among the different ranks of men. I have obſerved in a former Note, that this greatly interrupted the intercourſe between nations, and even between different places in the ſame kingdom. The deſcription which the Spaniſh hiſtorians give of the frequency of rapine, murder, and every act of violence, in all the provinces of Spain, are amazing, and preſent to us the idea of a ſociety but little removed from the diſorder and turbulence of that which has been called a ſtate of nature. Zurita Anales de Arag. i. 175. Æl. Ant. Nebriſſenſis rer. a Ferdin. geſtar. Hiſt. ap. Schottum II. 849. Though the exceſs of theſe diſorders rendered the inſtitution of the *Santa Hermandad* neceſſary, great care was taken at firſt to avoid giving any offence or alarm to the nobility. The juriſdiction of the judges of the Hermandad was

was exprefsly confined to crimes that violated the publick peace. All other offences were left to the cognizance of the ordinary judges. If a perfon was guilty of the moft notorious perjury, in any trial before a judge of the Hermandad, he could not punifh him, but was obliged to remit the cafe to the ordinary judge of the place. Commentaria in Regias Hifpan. Conftitut. per Alph. de Azevedo, pars v. p. 220, &c. fol. Duaci, 1612. Notwith-ftanding thefe reftrictions, the barons were fenfible how much the Hermandad would encroach on their jurifdiction. In Caftile, fome oppofition was made to the inftitution; but Ferdinand had the addrefs to obtain the confent of the Conftable to the intro-duction of the Hermandad into that part of the kingdom where his eftate lay; and by that means, as well as the popularity of the inftitution, he fur-mounted every obftacle that ftood in its way. Æl. Ant. Nebriffen. 851. In Aragon, the nobles com-bined againft it with greater fpirit; and Ferdinand, though he fupported it with vigour, was obliged to make fome conceffions in order to reconcile them. Zurita Anales de Arag. iv. 356. The power and revenue of the Hermandad in Caftile feems to have been very great. Ferdinand, when preparing for the war againft the Moors of Gra-nada, required of the Hermandad to furnifh him fixteen thoufand beafts of burden, together with eight thoufand men to conduct them, and he ob-tained what he demanded. Æl. Ant. Nebriff. 881. The Hermandad has been found to be of fo much ufe in preferving peace, and reftraining or detect-ing

ing crimes, that it is ſtill continued in Spain, although it be no longer neceſſary either for moderating the power of the nobility, or extending that of the crown.

NOTE XXXVIII. Sect. III. p. 199. [PP].

Nothing is more common among Antiquarians, and there is not a more copious ſource of error, than to decide concerning the inſtitutions and manners of paſt ages, by the forms and ideas which prevail in their own times. The French lawyers in the ſeventeenth and eighteenth centuries, having found their ſovereigns in poſſeſſion of abſolute power, ſeem to think it a duty incumbent on them, to maintain that ſuch unbounded authority belonged to the crown in every period of their monarchy. "The government of France," ſays M. de Real very gravely, "is purely monarchical at this day, as it was from the beginning. Our Kings were abſolute originally as they are at preſent." Science du Governement, tom. ii. p. 31. It is impoſſible, however, to conceive two ſtates of civil ſociety more unlike to each other, than that of the French nation under Clovis, and that under Louis XV. It is evident from the codes of laws of the various tribes which ſettled in Gaul and the countries adjacent to it, as well as from the hiſtory of Gregory of Tours, and other early annaliſts, that among all theſe people the form of government was extremely rude and ſimple, and that they had ſcarcely begun to acquire the firſt rudiments of

that order and police which are neceſſary in extenſive ſocieties. The King or leader had the command of ſoldiers or companions, who followed his ſtandard from choice, not by conſtraint. I have produced the cleareſt evidence of this, Note VI. An event related by Gregory of Tours, lib. iv. c. 14. affords the moſt ſtriking proof of the dependence of the early French Kings on the ſentiments and inclination of their people. Clotaire I. having marched at the head of his army, in the year 553, againſt the Saxons, that people, intimidated at his approach, ſued for peace, and offered to pay a large ſum to the offended monarch. Clotaire was willing to cloſe with what they propoſed. But his army inſiſted to be led forth to battle. The King employed all his eloquence to perſuade them to accept of what the Saxons were ready to pay. The Saxons, in order to ſoothe them, increaſed their original offer. The King renewed his ſolicitations: But the army enraged, ruſhed upon the King, tore his tent in pieces, dragged him out of it, and would have ſlain him on the ſpot, if he had not conſented to lead them inſtantly againſt the enemy.

If the early monarchs of France poſſeſſed ſuch limited authority, even while at the head of their army, their prerogative during peace will be found to be ſtill more confined. They aſcended the throne not by any hereditary right, but in conſequence of the election of their ſubjects. In order to avoid an unneceſſary number of quotations, I refer my readers

readers to Hottomanni Franco-gallia, cap. vi. p. 47. edit. 1573, where they will find the fullest proof of this from Gregory of Tours, Amoinus, and the most authentick historians of the Merovingian Kings. The effect of this election was not to invest them with absolute power. Whatever related to the general welfare of the nation, was submitted to publick deliberation, and determined by the suffrage of the people, in the annual assemblies called Les Champs de Mars and Les Champs de Mai. These assemblies were called *Champs*, because, according to the custom of all the barbarous nations, they were held in the open air, in some plain capable of containing the vast number of persons who had a right to be present. Jo. Jac. Sorberus de Comitiis veterum Germanorum, vol. i. § 19, &c. They were denominated Champs de Mars and de Mai, from the months in which they were held. Every free man seems to have had a right to be present in these assemblies. Sorberus, ibid. § 133, &c. The ancient annals of the Franks describe the persons who were present in the assembly held A. D. 788, in these words: In placito Ingelheimensi conveniunt pontifices, majores, minores, sacerdotes, reguli, duces, comites, præfecti, cives, oppidani, Apud Sorber. § 304. There every thing that concerned the happiness of their country, says an ancient historian, every thing that could be of benefit to the Franks, was considered and enjoined. Fredegarius ap. Du Cange Glossar. voc. *Campus Martii.* Chlotharius II. describes the business, and acknowledges the authority of these assemblies.

ſemblies. They are called, ſays he, that whatever relates to the common ſafety may be conſidered and reſolved by common deliberation; and whatever they determine, to that I will conform. Amoinus de Geſt. Franc. lib. iv. c. i. ap. Bouquet Recueil, iii. 116. The ſtatutory clauſes, or words of legiſlative authority in the decrees iſſued in theſe aſſemblies, run not in the name of the King alone. " We have treated, ſays Childebert, in a decree, A. D. 532, in the aſſembly of March, together with our Nobles, concerning ſome affairs, and we now publiſh the concluſion, that it may come to the knowledge of all." Childeb. Decret. ap. Bouquet Recueil des Hiſtor. tom. iv. p. 3. We have agreed together with our vaſſals. Ibid. § 2. It is agreed in the aſſembly in which we were all united. Ibid. § 4. The Salic laws, the moſt venerable monument of French juriſprudence, were enacted in the ſame manner. Dictaverunt Salicam legem proceres ipſius gentis, qui tunc temporis apud eam erant Rectores. Sunt autem electi de pluribus viri quatuor—qui per tres Mallos convenientes, omnes cauſarum origines ſollicité diſcurrendo, tractantes de ſingulis judicium decreverunt hoc modo. Præf. Leg. Salic. ap. Bouquet. Ibid. p. 122. Hoc decretum eſt apud regem & principes ejus, & apud cunctum populum chriſtianum, qui infra regnum Merwingorum conſiſtunt. Ibid. p. 124. Nay, even in their charters, the Kings of the firſt race are careful to ſpecify that they were granted with the conſent of their vaſſals. Ego Childebertus Rex unà cum conſenſu & voluntate Francorum,

Francorum, &c. A. D. 558. Bouquet, ibid. 622. Chlotharius III. unà cum patribus noſtris epiſcopis, optimatibus, cæteriſque palatii noſtri miniſtris, A. D. 664. Ibid. 648. De conſenſu fidelium noſtrorum. Mably Obſerv. tom. i. p. 239. The hiſtorians likewiſe deſcribe the functions of the King in the national aſſemblies in ſuch terms, as imply that his authority there was extremely ſmall, and that every thing depended on the court itſelf. Ipſe Rex (ſays the authors of Annales Francorum, ſpeaking of the Field of March) ſedebat in ſella regia, circumſtante exercitu, præcipiebatque is, die illo, quicquid a Francis decretum erat. Bouquet Recueil, tom. ii. p. 647.

That the general aſſemblies exerciſed ſupreme juriſdiction over all perſons, and with reſpect to all cauſes, is ſo evident as to ſtand in need of no proof. The trial of Brunehaut, A. D. 613, how unjuſt ſoever the ſentence againſt her may be, as related by Fredegarius, Chron. cap. 42. Bouquet, ibid. 430. is in itſelf ſufficient proof of this. The notorious violence and iniquity of the ſentence, ſerve to demonſtrate the extent of juriſdiction which this aſſembly poſſeſſed, as a Prince ſo ſanguinary as Clothaire II. thought the ſanction of its authority would be ſufficient to juſtify his rigorous treatment of the mother and grandmother of ſo many Kings.

With reſpect to conferring donatives on the Prince, we may obſerve, that among nations whoſe

manners and political inftitutions are fimple, the publick, as well as individuals, having few wants, they are unacquainted with taxes, and free uncivilized tribes difdain to fubmit to any ftated impofition. This was remarkably the cafe of the Germans, and of all the various people that iffued from that country. Tacitus pronounces two tribes not to be of German origin, becaufe they fubmitted to pay taxes. De Morib. Germ. c. 43. And fpeaking of another tribe according to the ideas prevalent in Germany, he fays, "they were not degraded by the impofition of taxes." Ibid. c. 29. Upon their fettlement in Gaul, we may conclude, that while elated with the confcioufnefs of victory, they would not renounce the high-fpirited ideas of their anceftors, or voluntarily fubmit to a burden which they regarded as a badge of fervitude. The evidence of the earlieft records and hiftorians juftify this conclufion. M. de Montefquieu, in the twelfth and fubfequent chapters of the thirteenth book of l'Efprit des Loix, and M. de Mably Obfervat. fur l'Hift. de France, tom. i. p. 247. have inveftigated this fact with great attention, and have proved clearly that the property of freemen among the Franks was not fubject to any ftated tax. That the ftate required nothing from perfons of this rank but military fervice at their own expence, and that they fhould entertain the King in their houfes when he was upon any progrefs through his dominions, or his officers when fent on any publick employment, furnifhing them with carriages and horfes. Monarchs fubfifted almoft

most entirely upon the revenues of their own domains, and upon the perquisites arising from the administration of justice, together with a few small fines and forfeitures exacted from those who had been guilty of certain trespasses. It is foreign from my subject to enumerate these. The reader may find them in Observat. de M. de Mably, vol. i. p. 267.

When any extraordinary aid was granted by free-men to their sovereign, it was purely voluntary. In the annual assembly of March or May, it was the custom to make the King a present of money, of horses or arms, or of some other thing of value. This was an ancient custom, and derived from their ancestors the Germans. Mos est civitatibus, ultro ac viritim conferri principibus vel armentorum vel frugum, quod pro honore acceptum, etiam necessitatibus subvenit. Tacit. de Mor. Germ. c. 15. These gifts, if we may form a judgment concerning them from the general terms in which they are mentioned by the ancient historians, were considerable, and made no small part of the royal revenue. Many passages to this purpose are produced by M. du Cange, Dissert. iv. sur Joinville, 153. Sometimes a conquered people specified the gift which they bound themselves to pay annually, and it was exacted as a debt if they failed. Annales Metenses, ap. Du Cange, ibid. p. 155. It is probable that the first step towards taxation was to ascertain the value of these gifts which were originally gratuitous, and to compel the people to pay the sum at which they were rated.

Still, however, ſome memory of their original was preſerved, and the aids granted to monarchs in all the kingdoms of Europe were termed benevolences or free-gifts.

The Kings of the ſecond race in France were raiſed to the throne by the election of the people. Pepinus Rex pius, ſays an author who wrote a few years after the tranſaction which he records, per authoritatem Papæ, & unctionem ſancti chriſmatis, & electionem omnium Francorum in regni ſolio ſublimatus eſt. Clauſula de Pepini conſecratione ap. Bouq. Recueil des Hiſtor. tom. v. p. 9. At the ſame time, as the chief men of the nation had transferred the crown from one family to another, an oath was exacted of them, that they ſhould maintain on the throne the family which they had now promoted; ut nunquam de alterius lumbis regem in ævo præſumant eligere. Ibid. p. 10. This oath the nation faithfully obſerved during a conſiderable ſpace of time. The poſterity of Pepin kept poſſeſſion of the throne; but with reſpect to the manner of dividing their dominions among their children, Princes were obliged to conſult the general aſſembly of the nation. Thus Pepin himſelf, A. D. 768, appointed his two ſons, Charles and Carlomannus, to reign as joint ſovereigns; but he did this, una cum conſenſu Francorum & procerum ſuorum ſeu & epiſcoporum, before whom he laid the matter in their general aſſembly. Conventus apud ſanctum Dionyſium. Capitular. vol. i. p. 187. This deſtination the French confirmed in

a ſub-

a ſubſequent aſſembly, which was called upon the death of Pepin; for, as Eginhart relates, they not only appointed them Kings, but by their authority they regulated the limits of their reſpective territories. Vita Car. Magni ap. Bouquet Recueil, tom. v. p. 90. In the ſame manner, it was by the authority of the ſupreme aſſemblies that any diſpute which aroſe among the deſcendants of the royal family was determined. Charlemagne recognizes this important part of their juriſdiction, and confirms it in his charter concerning the partition of his dominions; for he appoints, that, in caſe of any uncertainty with reſpect to the right of the ſeveral competitors, he whom the people ſhall chuſe, ſhall ſucceed to the crown. Capitular. vol. i. 442.

Under the ſecond race of Kings, the aſſembly of the nation, diſtinguiſhed by the name of Conventus, Malli, Placita, were regularly aſſembled once a year at leaſt, and frequently twice in the year. One of the moſt valuable monuments of the hiſtory of France is the treatiſe of Hincmarus, archbiſhop of Rheims, de ordine Palatii. He died A. D. 882. only ſixty-eight years after Charlemagne, and he relates in that ſhort diſcourſe the facts which were communicated to him by Adalhardus, a miniſter and confident of Charlemagne. From him we learn that this great monarch never failed to hold the general aſſembly of his ſubjects every year. In quo placito generalitas univerſorum majorum tam clericorum quam laicorum

 conveniebat.

conveniebat. Hincm. oper. edit. Sirmondi, vol. ii. c. 29. 211. In theſe aſſemblies, matters which related to the general ſafety and ſtate of the kingdom were always diſcuſſed, before they entered upon any private or leſs important buſineſs. Ibid. c. 33. p. 213. His immediate ſucceſſors imitated his example, and tranſacted no affair of importance without the advice of their great council.

Under the ſecond race of Kings, the genius of the French government continued to be in a good meaſure democratical. The nobles, the dignified eccleſiaſtics, and the great officers of the crown, were not the only members of the national council; the people, or the whole body of free-men, either in perſon, or by their repreſentatives, had a right to be preſent in it. Hincmarus, in deſcribing the manner of holding the general aſſemblies, ſays, that if the weather was favourable, they met in the open air, but, if otherwiſe, they had different apartments allotted to them, ſo that the dignified clergy were ſeparated from the laity, and the comites vel hujuſmodi principes ſibimet honorificabiliter a cætera multitudine ſegregarentur. Ibid. c. 35. p. 114. Agobardus, archbiſhop of Lyons, thus deſcribes a national council in the year 833, wherein he was preſent. Qui ubique conventus extitit ex reverentiſſimis epiſcopis, & magnificentiſſimis viris inluſtribus, collegio quoque abbatum & comitum, promiſcuæque ætatis & dignitatis populo. The *cætera multitudo* of Hincmarus is the ſame with the *populus* of Agobardus, and

and both defcribe the inferior order of freemen, the fame who were afterwards known in France by the name of the third eftate, and in England by the name of commons. The people, as well as the members of higher dignity, were admitted to a fhare of the legiflative power. Thus, by a law, A. D. 803. it is ordained, "that the queftion fhall be put to the people with refpect to every new law, and if they fhall agree to it, they fhall confirm it by their fignature." Capit. vol. i. 394. There are two capitularia which convey to us a full idea of the part which the people had in the adminiftration of government. When they felt the weight of any grievance, they had a right to petition the fovereign for redrefs. One of thefe petitions, in which they defire that ecclefiafticks might be exempted from bearing arms, and from ferving in perfon againft the enemy, is ftill extant. It is addreffed to Charlemagne, A. D. 803, and expreffed in fuch terms as could have been ufed only by men confcious of liberty, and of the extenfive privileges which they poffeffed. They conclude with requiring him to grant their demand, if he wifhed that they fhould any longer continue faithful fubjects to him. That great monarch, inftead of being offended or furprifed at the boldnefs of their petition, received it in a moft gracious manner, and fignified his willingnefs to comply with it. But fenfible that he himfelf did not poffefs legiflative authority, he promifes to lay the matter before the next general affembly, that fuch things as were of common concern to all might

be there confidered and eftablifhed by common confent. Capitul. tom. i. p. 405.—409. As the people by their petitions brought matters to be propofed in the general affembly, we learn from another capitulare the form in which they were approved there, and enacted as laws. The propofitions were read aloud, and then the people were required to declare whether they affented to them or not. They fignified their affent by crying three times, "We are fatisfied," and then the capitulare was confirmed by the fubfcription of the monarch, the clergy and the chief men of the laity. Capitul. tom. i. p. 627. A. D. 822. It feems probable from a capitulare of Carolus Calvus, A. D. 851, that the fovereign could not refufe his affent to what was propofed and eftablifhed by his fubjects in the general affembly. Tit. ix. § 6. Capitul. vol. ii. p. 47. It is unneceffary to multiply quotations concerning the legiflative power of the national affembly of France under the fecond race, or concerning its right to determine with regard to peace and war. The uniform ftyle of the Capitularia is an abundant confirmation of the former. The reader who defires any farther information with refpect to the latter, may confult Les Origines ou l'Ancien Gouvernement de la France, &c. tom. iii. p. 87, &c. What has been faid with refpect to the admiffion of the people or their reprefentatives into the fupreme affembly merits attention, not only in tracing the progrefs of the French government, but on account of the light which it throws upon a fimilar queftion

queſtion agitated in England, concerning the time when the commons became part of the legiſlative body in that kingdom.

NOTE XXXIX. Sect. III. p. 201. [QQ].

That important change which the conſtitution of France underwent, when the legiſlative power was transferred from the great council of the nation to the King, has been explained by the French antiquarians with leſs care, than they beſtow in illuſtrating other events in their hiſtory. For that reaſon I have endeavoured with the greater attention to trace the ſteps which led to this memorable revolution. I ſhall here add ſome particulars which tend farther to illuſtrate it. The Leges Salicæ, the Leges Burgundionum, and other codes publiſhed by the ſeveral tribes which ſettled in Gaul, were general laws extending to every perſon, to every province and diſtrict where their authority was acknowledged. But they ſeem to have become obſolete; and the reaſon of their falling into diſuſe is very obvious. Almoſt the whole property of the nation was allodial when theſe laws were framed. But when the feudal inſtitutions became general, and gave riſe to an infinite variety of queſtions peculiar to that ſpecies of tenure, the ancient codes were of no uſe in deciding with regard to theſe, becauſe they could not contain regulations applicable to caſes which did not exiſt at the time when they were compiled. This conſiderable change in the nature of property made

made it neceſſary to publiſh the new regulations contained in the *Capitularia*. Many of theſe, as is evident from the peruſal of them, were general laws extending to the whole French nation, in the general aſſembly of which they were enacted. The weakneſs of the greater part of the monarchs of the ſecond race, and the diſorder into which the nation was thrown by the depredations of the Normans, encouraged the barons to uſurp an independent power formerly unknown in France. The nature and extent of that juriſdiction which they aſſumed, I have formerly conſidered. The political union of the kingdom was at an end, its ancient conſtitution was diſſolved, and only a feudal relation ſubſiſted between the King and his vaſſals. The regal juriſdiction extended no further than the domains of the crown. Under the laſt Kings of the ſecond race, theſe were reduced almoſt to nothing. Under the firſt Kings of the third race, they comprehended little more than the patrimonial eſtate of Hugh Capet, which he annexed to the crown. Even with this acceſſion, they continued to be very narrow. Velly. Hiſt. de France, tom. iii. p. 32. Many of the moſt conſiderable provinces of France did not at firſt acknowledge Hugh Capet as a lawful Monarch. There are ſtill extant ſeveral charters, granted during the firſt years of his reign, with this remarkable clauſe in the form of dating the charter; "Deo regnante, rege expectante," regnante domino noſtro Jeſu Chriſto, Francis autem contra jus regnum uſurpante Ugone rege. Bouquet Re-

cueil, tom. x. p. 544. A Monarch whoſe title was thus openly diſputed, was not in a condition to aſſert the royal juriſdiction, or to limit that of the barons.

All theſe circumſtances rendered it eaſy for the barons to uſurp the rights of royalty within their own territories. The capitularia became no leſs obſolete than the ancient laws; local cuſtoms were every where introduced, and became the ſole rule by which all civil tranſactions were conducted, and all cauſes were tried. The wonderful ignorance, which became general in France, during the ninth and tenth centuries, contributed to the introduction of cuſtomary law. Few perſons, except eccleſiaſtics, could read; and as it was not poſſible for them to have recourſe to written laws, either as their guide in buſineſs, or their rule in adminiſtering juſtice, the cuſtomary law univerſally prevailed.

During this period, the general aſſembly of the nation ſeems not to have been called, nor to have once exerted its legiſlative authority. Local cuſtoms regulated and decided every thing. A ſtriking proof of this occurs in tracing the progreſs of the French juriſprudence. The laſt of the Capitularia collected by M. Baluze, was iſſued in the year 921, by Charles the Simple. An hundred and thirty years elapſed from that period to the publication of the firſt ordonance of the Kings of the third race, contained in the great collection

collection of M. Lauriere, and the first ordonance which appears to be an act of legislation extending to the whole kingdom, is that of Philip Augustus, A. D. 1190. Ordon. tom. i. p. 1, 18. During that long period of one hundred and sixty-nine years, all transactions were directed by local customs, and no addition was made to the statutory law of France. The ordonances, previous to the reign of Philip Augustus, contain regulations, the authority of which did not extend beyond the King's domains.

Various instances occur of the caution with which the Kings of France ventured at first to exercise legislative authority. M. l'Ab. de Mably produces an ordonance of Philip Augustus, A. D. 1206, concerning the Jews, who, in that age, were in some measure the property of the lord in whose territories they resided. But it is not so much an act of royal power, as a treaty of the King with the countess of Champagne, and the comte de Dampierre; and the regulations in it seem to be established not by his authority, but by their consent. Observat. sur l'hist. de France, ii. p. 355. In the same manner an ordonance of Louis VIII. concerning the Jews, A. D. 1223, is a contract between the King and his nobles, with respect to their manner of treating that unhappy race of men. Ordon. tom. i. p. 47. The Establissemens of St. Louis, though well adapted to serve as general laws to the whole kingdom, were not published as such, but only as a complete

code of customary law, to be of authority within the King's domains. The wisdom, the equity and the order conspicuous in that code of St. Louis, procured it a favourable reception throughout the kingdom. The veneration due to the virtues and good intentions of its author, contributed not a little to reconcile the nation to that legislative authority, which the King began to assume. Soon after his time, the idea of the King's possessing supreme legislative power became common. If, says Beaumanoir, the King makes any establishment specially for his own domain, the barons may nevertheless adhere to their ancient customs; but if the establishment be general, it shall be current throughout the whole kingdom, and we ought to believe that such establishments are made with mature deliberation, and for the general good. Cout. de Beauvoisis, c. 48. p. 265. Though the Kings of the third race did not call the general assembly of the nation, during the long period from Hugh Capet to Philip the Fair, yet they seem to have consulted the bishops and barons who happened to be present in their court, with respect to any new law which they published. Examples of this occur Ordon. tom. i. p. 3 & 5. The practice seems to have continued as late as the reign of St. Louis, when the legislative authority of the crown was well established. Ordon. tom. i. p. 58. A. D. 1246. This attention paid to the barons facilitated the King's acquiring such full possession of the legislative power, as enabled

them afterwards to exercise it without observing that formality.

The assemblies, distinguished by the name of the States General, were first called A. D. 1302, and were held occasionally from that period to the year 1614, since which time they have not been summoned. These were very different from the ancient assemblies of the French nation under the Kings of the first and second race. There is no point with respect to which the French antiquarians are more generally agreed, than in maintaining that the States General had no suffrage in the passing of laws, and possessed no proper jurisdiction. The whole tenor of the French history confirms this opinion. The form of proceeding in the States General was this. The King addressed himself to the whole body assembled in one place, and laid before them the affairs on account of which he had summoned them. The deputies of each of the three orders, of nobles, of clergy, and of the third estate, met apart, and prepared their *cahier* or memorial, containing their answer to the propositions which had been made to them, together with the representations which they thought proper to lay before the King. These answers and representations were considered by the King in his council, and generally gave rise to an ordonance. These ordonances were not addressed to the three estates in common. Sometimes the King addressed an ordonance to each of the estates

in particular. Sometimes he mentioned the aſſembly of the three eſtates. Sometimes mention is made only of the aſſembly of that eſtate to which the ordonance is addreſſed. Sometimes no mention at all is made of the aſſembly of eſtates, which ſuggeſted the propriety of enacting the law. Preface au tom. iii. des Ordon. p. xx. Thus the States General had only the privilege of adviſing and remonſtrating; the legiſlative authority reſided in the King alone.

NOTE XL. Sect. III. p. 206. [RR].

If the parliament of Paris be conſidered only as the ſupreme court of juſtice, every thing relative to its origin and juriſdiction is clear and obvious. It is the ancient court of the King's palace, new-modelled, rendered ſedentary, and inveſted with an extenſive and aſcertained juriſdiction. The power of this court, while employed in this part of its functions, is not the object of preſent conſideration. The pretenſions of the parliament to controul the exerciſe of the legiſlative authority, and its claim of a right to interpoſe with reſpect to publick affairs and the political adminiſtration of the kingdom, lead to inquiries attended with greater difficulty. As the officers and members of the parliament of Paris were anciently nominated by the King, were paid by him, and on ſeveral occaſions were removed by him at pleaſure, (Chroniq. Scandaleuſe de Louis XI. chez les Mem. de Comines, tom. ii. p. 51. Edit. de M. Lenglet

Lenglet de Fresnoy) they cannot be considered as representatives of the people, nor could they claim any share in the legislative power as acting in their name. We must search for some other source of this high privilege. The parliament was originally composed of the most eminent persons in the kingdom. The peers of France, ecclesiastics of the highest order, and noblemen of illustrious birth were members of it, to whom were added some clerks and counsellors learned in the laws. Pasquier Recherches, p. 44, &c. Encyclopedie, tom. xii. Art. *Parlement*, p. 3, 5. A court thus constituted was properly a committee of the States General of the kingdom, and was composed of these barons and *fideles*, whom the Kings of France were accustomed to consult with regard to every act of jurisdiction or legislative authority. It was natural, therefore, during the intervals between the meetings of the States General, or during those periods when that assembly was not called, to consult the parliament, to lay matters of publick concern before it, and to obtain its approbation and concurrence, before any ordonance was published, to which the people were required to conform. 2. Under the second race of Kings, every new law was reduced into proper form by the Chancellor of the kingdom, was proposed by him to the people, and when enacted, was committed to him to be kept among the publick records, that he might give authentick copies of it to all who should demand them. Hincm. de ord. palat. c. 16. Capitul. Car. Calv.

tit.

tit. xiv. § 11. tit. xxxiii. The chancellor preſided in the parliament of Paris at its firſt inſtitution. Encyclopedie, tom. iii. art. *Chancelier*, p. 88. It was therefore natural for the King to continue to employ him in his ancient functions of framing, taking into his cuſtody, and publiſhing the ordonances which were iſſued. To an ancient copy of the Capitularia of Charlemagne, the following words are ſubjoined. Anno tertio Clementiſſimi domini noſtri Caroli Auguſti, ſub ipſo anno, hæc facta Capitula ſunt, & conſignata Stephano comiti, ut hæc manifeſta faceret Pariſiis mallo publico, & illa legere faceret coram Scabineis, quod ita & fecit, & omnes in uno conſenſerunt, quod ipſi voluiſſent obſervare uſque in poſterum, etiam omnes Scabinei, Epiſcopi, Abbates, Comites, manu propria ſubter ſignaverunt. Bouquet Recueil, tom. v. p. 663. *Mallus* ſignifies not only the publick aſſembly of the nation, but the court of juſtice held by the comes, or miſſus dominicus. Scabini were the judges, or the aſſeſſors of the judges in that court. Here then ſeems to be a very early inſtance, not only of laws being publiſhed in a court of juſtice, but of their being verified or confirmed by the ſubſcription of the judges. If this was the common practice, it naturally introduced the verifying of edicts in the parliament of Paris. But this conjecture I propoſe with that diffidence, which I have felt in all my reaſonings concerning the laws and inſtitutions of foreign nations. 3. This ſupreme court of juſtice in

France was dignified with the appellation of parliament, the name by which the general assembly of the nation was distinguished towards the close of the second race of Kings; and men, both in reasoning and in conduct, are wonderfully influenced by the similarity of names. The preserving the ancient names of the magistrates established while republican government subsisted in Rome, enabled Augustus and his successors to assume new powers, with less observation, and greater ease. The bestowing the same name in France upon two courts, which were extremely different, contributed not a little to confound their jurisdiction and functions.

All these circumstances concurred in leading the Kings of France to avail themselves of the parliament of Paris, as the instrument of reconciling the people to their exercise of legislative authority. The French, accustomed to see all new laws examined and authorised before they were published, did not sufficiently distinguish between the effect of performing this in the national assembly, or in a court appointed by the King. But as that court was composed of respectable members, and well skilled in the laws of their country, when any new edict received its sanction, that was sufficient to dispose the people to implicit submission.

When the practice of *verifying* and *registering* the royal edicts in the parliament of Paris became common, the parliament contended that this was necessary

necessary in order to give them legal authority. It was established as a fundamental maxim in French jurisprudence, that no law could be published in any other manner; that, without this formality, no edict or ordonance could have any effect; that the people were not bound to obey it, and ought not to consider it as an edict or ordonance until it was verified in the supreme court, after free deliberation. Roche-flavin des Parlemens de France, 4to. Gen. 1621. p. 921. The parliament, at different times, hath with great fortitude and integrity opposed the will of their sovereigns; and notwithstanding their repeated and peremptory requisitions and commands, hath refused to verify and publish such edicts as it conceived to be oppressive to the people, or subversive of the constitution of the kingdom. Roche-flavin reckons, that between the year 1562, and the year 1589, the parliament refused to verify more than a hundred edicts of the Kings. Ibid. 925. Many instances of the spirit and constancy with which the parliaments of France opposed pernicious laws, and asserted their own privileges, are enumerated by Limnæus Notitiæ Regni Franciæ, lib. i. c. 9. p. 224.

But the power of the parliament to maintain and defend this privilege, bore no proportion to its importance, or to the courage with which its members asserted it. When any monarch was determined that an edict should be carried into execution, and found the parliament inflexibly resolved

 not

not to verify or publiſh it, he could eaſily ſupply this defect by the plenitude of his regal power. He repaired to the parliament in perſon, he took poſſeſſion of his ſeat of juſtice, and commanded the edict to be read, verified, regiſtered and publiſhed in his preſence. Then, according to another maxim of French law, the King himſelf being preſent, neither the parliament, nor any magiſtrate whatever, can exerciſe any authority, or perform any function. Adveniente Principe, ceſſat magiſtratus. Roche-flavin. ibid. p. 928, 929. Encyclopedie, tom. ix. Art. *Lit de Juſtice*, p. 581. Roche-flavin mentions ſeveral inſtances of Kings who actually exerted this prerogative, ſo fatal to the reſidue of the rights and liberties tranſmitted to the French by their anceſtors. Paſquier produces ſome inſtances of the ſame kind. Rech. p. 61. Limnæus enumerates many others, which the length to which this note has ſwelled, prevents me from inſerting at length, though they tend greatly to illuſtrate this important article in the French hiſtory, p. 245. Thus by an exertion of prerogative, which, though violent, ſeems to be conſtitutional, and is juſtified by innumerable precedents, all the efforts of the parliament to limit and controul the King's legiſlative authority, are rendered ineffectual.

I HAVE not attempted to explain the conſtitution or juriſdiction of any parliament in France, but that of Paris. All of them are formed upon

the model of that most ancient and respectable tribunal, and all my observations concerning it will apply with full force to them.

NOTE XLI. Sect. III. p. 211. [SS].

The humiliating posture, in which a great Emperor implored absolution, is an event so singular, that the words in which Gregory himself describes it, merit a place here, and convey a striking picture of the arrogance of that Pontiff. Per triduum, ante portam castri, deposito omni regio cultu, miserabiliter, utpote discalceatus, & laneis indutus, persistens, non prius cum multo fletu apostolicæ miserationis auxilium, & consolationem implorari destitit, quam omnes qui ibi aderant, & ad quos rumor ille pervenit, ad tantam pietatem, & compassionis misericordiam movit, ut pro eo multis precibus & lacrimis intercedentes, omnes quidem insolitam nostræ mentis duritiem mirarentur; nonnulli vero in nobis non apostolicæ sedis gravitatem, sed quasi tyrannicæ feritatis crudelitatem esse clamarent. Epist. Gregor. ap. Memorie della Contessa Matilda da Fran. Mar. Fiorentini. Lucca. 1756. vol. i. p. 174.

NOTE XLII. Sect. III. p. 222. [TT].

As I have endeavoured in the history to trace the various steps in the progress of the constitution of the Empire, and to explain the peculiarities in its policy very fully, it is not necessary to add much by way of illustration. What appears to be

be of any importance, I ſhall range under diſtinct heads.

1. With reſpect to the power, juriſdiction and revenue of the Emperors. A very juſt idea of theſe may be formed by attending to the view which Pfeffel gives of the rights of the Emperors at two different periods. The firſt at the cloſe of the Saxon race, A. D. 1024. Theſe, according to his enumeration, were the right of conferring all the great eccleſiaſtical benefices in Germany; of receiving the revenues of them during a vacancy; of Mort-main, or of ſucceeding to the effects of eccleſiaſticks who died inteſtate. The right of confirming or of annulling the elections of the Popes. The right of aſſembling councils, and of appointing them to decide concerning the affairs of the church. The right of conferring the title of King upon their vaſſals. The right of granting vacant fiefs. The right of receiving the revenues of the Empire, whether ariſing from the Imperial domains, from impoſts and tolls, from gold or ſilver mines, from the taxes paid by the Jews, or from forfeitures. The right of governing Italy as its proper ſovereigns. The right of erecting free cities, and of eſtabliſhing fairs in them. The right of aſſembling the diets of the Empire, and of fixing the time of their duration. The right of coining money, and of conferring that privilege on the ſtates of the Empire. The right of adminiſtering both high and low juſtice within the territories of the different ſtates. Abregé, p. 160. The other period

period is at the extinction of the Emperors of the families of Luxemburg and Bavaria, A. D. 1437. According to the same author, the Imperial prerogatives at that time were the right of conferring all dignities and titles, except the privilege of being a state of the Empire. The right of *Preces primariæ*, or of appointing once during their reign a dignitary in each chapter or religious house. The right of granting dispensations with respect to the age of majority. The right of erecting cities, and of conferring the privilege of coining money. The right of calling the meetings of the diet, and of presiding in them. Abregé, &c. p. 507. It were easy to show that M. Pfeffel is well founded in all these assertions, and to confirm them by the testimony of the most respectable authors. In the one period, the Emperors appear as mighty sovereigns with extensive prerogatives; in the other, as the heads of a confederacy with very limited powers.

THE revenues of the Emperors decreased still more than their authority. The early Emperors, and particularly those of the Saxon line, besides their vast patrimonial or hereditary territories, possessed an extensive domain both in Italy and Germany which belonged to them as Emperors. Italy belonged to the Emperors as their proper kingdom, and the revenues which they drew from it were very considerable. The first alienations of the Imperial revenue were made in this country. The Italian cities having acquired wealth, and

aſpiring at independence, purchaſed their liberty from different Emperors, as I have obſerved Note XV. The ſums which they paid, and the Emperors with whom they concluded theſe bargains, are mentioned by Caſp. Klockius de Ærario Norimb. 1671. p. 85, &c. Charles IV. and his ſon Wenceſlaus, diſſipated all that remained of the Italian branch of the domain. The German domain lay chiefly upon the banks of the Rhine, and was under the government of the Counts Palatine. It is not eaſy to mark out the boundaries, or to eſtimate the value of this ancient domain, which has been ſo long incorporated with the territories of different Princes. Some hints with reſpect to it may be found in the gloſſary of Speidelius, which he has intituled Speculum Juridico-Philologico-politico-Hiſtoricum Obſervationum, &c. Norimb. 1673. vol. i. 679. 1045. a more full account of it is given by Klockius de Ærario, p. 84. Beſides this, the Emperors poſſeſſed conſiderable diſtricts of land lying intermixed with the eſtates of the Dukes and barons. They were accuſtomed to viſit theſe frequently, and drew from them what was ſufficient to ſupport their court during the time of their reſidence. Annaliſtæ, ap. Struv. tom. i. 611. A great part of theſe were ſeized by the nobles during the long interregnum, or during the wars occaſioned by the conteſts between the Emperors and the court of Rome. At the ſame time that ſuch encroachments were made on the fixed or territorial property of the Emperors, they were robbed almoſt entirely of their caſual revenues. The

Princes

Princes and barons appropriating to themſelves taxes and duties of every kind, which had uſually been paid to them. Pfeffel Abregé, p. 374. The profuſe and inconſiderate ambition of Charles IV. ſquandered whatever remained of the Imperial revenues after ſo many defalcations. He, in the year 1376, in order to prevail with the Electors to chuſe his ſon Wenceſlaus King of the Romans, promiſed each of them a hundred thouſand crowns. But being unable to pay ſo large a ſum, and eager to ſecure the election to his ſon, he alienated to the three eccleſiaſtical Electors, and to the Count Palatine, ſuch countries as ſtill belonged to the Imperial domain on the banks of the Rhine, and likewiſe made over to them all the taxes and tolls then levied by the Emperors in that diſtrict. Trithemius, and the author of the Chronicle of Magdeburgh, enumerate the territories and taxes which were thus alienated, and repreſent this as the laſt and fatal blow to the Imperial authority. Struv. Corp. vol. i. p. 437. From that period, the ſhreds of the ancient revenues poſſeſſed by the Emperors have been ſo inconſiderable, that, in the opinion of Speidelius, all that they yield would be ſo far from defraying the expence of ſupporting their houſehold, that they would not pay the charge of maintaining the poſts eſtabliſhed in the Empire. Speidelii Speculum, &c. vol. i. p. 680. Theſe funds, inconſiderable as they were, continued to decreaſe. Granvelle, the miniſter of Charles V. aſſerted in the year 1546, in preſence of ſeveral of the German Princes, that his maſter drew no

money

money at all from the Empire. Sleid. Hiſtory of the Reformation, Lond. 1689. p. 372. The ſame is the caſe at preſent. Traitè de droit Publique de l'Empire par M. le Coq de Villeray, p. 55. From the reign of Charles IV. whom Maximilian called the peſt of the Empire, the Emperors have depended entirely on their hereditary dominions, as the only ſource of their power, and even of their ſubſiſtence.

2. THE ancient mode of electing the Emperors, and the various changes which it underwent, require ſome illuſtration. The Imperial crown, as well as thoſe of moſt monarchies in Europe, were originally attained by election. An opinion long prevailed among the antiquaries and publick lawyers of Germany, that the right of chuſing the Emperors was veſted in the archbiſhops of Mentz, Cologne and Treves, the King of Bohemia, the Duke of Saxony, the Marquis of Brandenburgh, and the Count Palatine of the Rhine, by an edict of Otho III. confirmed by Gregory V. about the year 996. But the whole tenor of hiſtory contradicts this opinion. It appears, that from the earlieſt period in the hiſtory of Germany, the perſon who was to reign over all, was elected by the ſuffrage of all. Thus Conrad I. was elected by all the people of the Franks, ſay ſome annaliſts; by all the princes and chief men, ſay others; by all the nation, ſay others. See their words, Struv. Corp. 211. Conringius de German. Imper. Repub. Acroamata Sex. Ebroduni 1654. p. 103. In the year

year 1024, posterior to the supposed regulations of Otho III. Conrad II. was elected by all the chief men, and his election was approved and confirmed by the people. Struv. Corp. 284. At the election of Lotharius II. A. D. 1125, sixty thousand persons of all ranks were present. He was named by the chief men, and their nomination was approved by the people. Struv. ibid. p. 357. The first author who mentions the seven Electors is Martinus Polonus, who flourished in the reign of Frederick II. which ended A. D. 1250. We find, that in all the ancient elections to which I have referred, the Princes of the greatest power and authority were allowed by their countrymen to name the person whom they wished to appoint Emperor, and the people approved or disapproved of their nomination. This privilege of voting first is called by the German lawyers the right of *Prætaxation.* Pfeffel Abregé, p. 316. This was the first origin of the exclusive right which the Electors acquired. The Electors possessed the most extensive territories of any Princes in the Empire; all the great offices of the state were in their hands by hereditary right; as soon as they obtained or engrossed so much influence in the election as to be allowed the right of prætaxation, it became unnecessary for the inferior ecclesiastics and barons to attend, when they had no other function but that of confirming the deed of these more powerful Princes by their assent. During times of turbulence, they could not resort to the place of election without a numerous retinue of armed vassals, the expence

expence of which they were obliged to defray out of their own revenues. The rights of the ſeven Electors were ſupported by all the deſcendants and allies of their powerful families, who ſhared in the ſplendor and influence which they enjoyed by this diſtinguiſhing privilege. Pfeffel Abregé, p. 376. The ſeven Electors were conſidered as the repreſentatives of all the orders which compoſed the higheſt claſs of German nobility. There were three archbiſhops, chancellors of the three great diſtricts into which the Empire was anciently divided; one King; one Duke; one Marquis; and one Count. All theſe circumſtances contributed to render the introduction of this conſiderable innovation into the conſtitution of the Germanick body extremely eaſy. Every thing of importance, relating to this branch of the political ſtate of the Empire, is well illuſtrated by Onuphrius Panvinius, an Auguſtinian Monk of Verona, who lived in the reign of Charles V. His treatiſe, if we make ſome allowance for that partiality which he expreſſes in favour of the powers which the Popes claimed in the Empire, has the merit of being one of the firſt works in which a contraverted point in hiſtory is examined with critical preciſion, and with a proper attention to that evidence which is derived from records, or the teſtimony of contemporary hiſtorians. It is inſerted by Goldaſtus in his Politica Imperialia, p. 2.

As the Electors have engroſſed the ſole right of chuſing the Emperors, they have aſſumed likewiſe that of depoſing them. This high power the Electors

Electors have not only presumed to claim, but have ventured, in more than one instance, to exercise. In the year 1298, a part of the Electors deposed Adolphus of Nassau and substituted Albert of Austria in his place. The reasons on which they found their sentence, show that this deed flowed from factious, not from publick-spirited motives. Struv. Corp. vol. i. 540. In the first year of the fifteenth century, the Electors deposed Wenceslaus, and placed the Imperial crown on the head of Rupert Elector Palatine. The act of deposition is still extant. Goldasti Constit. vol. i. 379. It is pronounced in the name and by the authority of the Electors, and confirmed by several prelates and barons of the Empire, who were present. These exertions of the electoral power demonstrate that the Imperial authority was sunk very low.

The other privileges of the Electors, and the rights of the electoral college are explained by the writers on the publick law in Germany.

3. With respect to the diets or general assemblies of the Empire, it would be necessary, if my object were to write a particular history of Germany, to enter into a minute detail, concerning the forms of assembling it, the persons who have right to be present, their division into several Colleges or Benches, the objects of their deliberation, the mode in which they carry on their debates or give their suffrages, and the authority of their decrees

decrees or recesses. But in a general history it is sufficient to observe, that, originally, the diets of the Empire were perfectly the same with the assemblies of March and of May, held by the Kings of France. They met, at least, once a year. Every freeman had a right to be present. They were assemblies, in which a monarch deliberated with his subjects, concerning their common interest. Arumæus de comitiis Rom. German. Imperii, 4to, Jenæ. 1660, cap. 7. N°. 20, &c. But when the Princes, dignified ecclesiastics, and barons, acquired territorial and independent jurisdiction, the diet became an assembly of the separate states, which formed the confederacy of which the Emperor was head. While the constitution of the Empire remained in its primitive form, attendance on the diets was a duty, like the other services due from feudal subjects to their sovereign, which the members were bound to perform in person; and if any member who had a right to be present in the diet neglected to attend in person, he not only lost his vote, but was liable to an heavy penalty. Arumæus de Comit. c. 5. N°. 40. Whereas, from the time that the members of the diet became independent states, the right of suffrage was annexed to the territory or dignity, not to the person. The members, if they could not, or would not attend in person, might send their deputies, as Princes send ambassadors, and they were entitled to exercise all the rights belonging to their constituents. Ibid. N°. 42, 46, 49. By degrees, and upon the same principle of considering

considering the diet as an assembly of independent states, in which each confederate had the right of suffrage, if any member possessed more than one of those states or characters which entitle to a seat in the diet, he was allowed a proportional number of suffrages. Pfeffel Abregé, 622. From the same cause the Imperial cities, as soon as they became free, and acquired supreme and independent jurisdiction within their own territories, were received as members of the diet. The powers of the diet extend to every thing relative to the common concern of the Germanick body, or that can interest or affect it as a confederacy. The diet takes no cognizance of the interior administration in the different States, unless that happens to disturb or threaten the general safety.

4. With respect to the Imperial chamber, the jurisdiction of which has been the great source of order and tranquillity in Germany, it is necessary to observe, that this court was instituted in order to put an end to the calamities occasioned by private wars in Germany. I have already traced the rise and progress of this practice, and pointed out its pernicious effects as fully as their extensive influence during the middle ages merited. In Germany, private wars seem to have been more frequent and productive of worse consequences than in the other countries of Europe. There are obvious reasons for this. The nobility of Germany were extremely numerous, and the causes of their dissention multiplied in proportion. The

territorial jurisdiction which the German nobles acquired, was more compleat than that professed by their order in other nations. They became, in reality, independent powers, and they claimed all the privileges of that character. The long interregnum accustomed them to an uncontrouled licence, and led them to forget that subordination which is necessary in order to maintain publick tranquillity. At the time when the other monarchs of Europe began to acquire such an increase of power and revenues, as added new force to their government, the authority and revenues of the Emperors continued gradually to decline. The diets of the Empire, which alone had authority to judge between such mighty barons, and power to enforce its decisions, met very seldom. Conring. Acroamata, p. 234. The diets when they did assemble were often composed of several thousand members, Chronic. Constant. ap. Struv. Corp. i. p. 546, and were mere tumultuary assemblies, ill-qualified to decide concerning any question of right. The session of the diets continued only two or three days; Pfeffel Abregé, p. 244, so that they had no time to hear or discuss any cause that was in the smallest degree intricate. Thus Germany was left, in some measure, without any court of judicature, capable of repressing the evils of private war.

All the expedients which were employed in other countries of Europe in order to restrain this practice, and which I have described Note XXI. were

were tried in Germany with little effect. The confederacies of the nobles and of the cities, and the division of Germany into various circles, which I mentioned in that Note, were found likewise insufficient. As a last remedy, the Germans had recourse to arbiters whom they called *Austregæ*. The barons and states in different parts of Germany joined in conventions, by which they bound themselves to refer all controversies, that might arise between them, to the determination of *Austregæ*, and to submit to their sentences as final. These arbiters are named sometimes in the treaty of convention, an instance of which occurs in Ludewig Reliquæ Manuscr. omnis ævi, vol. ii. 212.; sometimes they were chosen by mutual consent; sometimes they were appointed by neutral persons; and sometimes the choice was left to be decided by lot. Datt. de Pace publica Imperii, lib. i. cap. 27. N° 60, &c. Speidelius Speculum, &c. voc. *Austrag*. p. 95. Upon the introduction of this practice, the publick tribunals of justice became, in a great measure, useless, and were almost entirely deserted.

In order to re-establish the authority of government, Maximilian instituted the Imperial chamber, at the period which I have mentioned. This tribunal consisted originally of a president, who was always a nobleman of the first order, and of sixteen judges. The president was appointed by the Emperor, and the judges, partly by him, and partly by the States, according to forms which it is un-

neceſſary to deſcribe. A ſum was impoſed, with their own conſent, on the States of the Empire, for paying the ſalaries of the judges, and officers in this court. The Imperial chamber was eſtabliſhed firſt at Francfort on the Maine. During the reign of Charles V. it was removed to Spires, and continued in that city above a century and a half. It is now fixed at Wetzlar. This court takes cognizance of all queſtions concerning civil right between the States of the Empire, and paſſes judgment in the laſt reſort, and without appeal. To it belongs, likewiſe, the privilege of judging in criminal cauſes, which may be conſidered as connected with the preſervation of the publick peace. Pfeffel Abregé, 560.

All cauſes relating to points of feudal right or juriſdiction, together with ſuch as reſpect the territories which hold of the Empire in Italy, belong properly to the juriſdiction of the Aulick council. This tribunal was formed upon the model of the ancient court of the palace inſtituted by the Emperors of Germany. It depended not upon the States of the Empire, but upon the Emperor; he having the right of appointing at pleaſure all the judges of whom it is compoſed. Maximilian, in order to procure ſome compenſation for the diminution of his authority, by the powers veſted in the Imperial chamber, prevailed on the diet A. D. 1512. to give its conſent to the eſtabliſhment of the Aulick council. Since that time, it has been a great object of policy in the court of Vienna to extend

extend the jurisdiction, and support the authority of the Aulick council, and to circumscribe and weaken those of the Imperial chamber. The tedious forms and dilatory proceedings of the Imperial chamber have furnished the Emperors with pretexts for doing so. Lites Spiræ, according to the witticism of a German lawyer, spirant, sed nunquam exspirant. Such delays are unavoidable in a court composed of members named by States, jealous of each other. Whereas the judges of the Aulick council, depending on one master, and being responsible to him alone, are more vigorous and decisive. Puffendorf. de Statu Imper. German. cap. v. § 20. Pfeffel Abregé, p. 581.

NOTE XLIII. Sect. III. p. 225. [UU].

The description which I have given of the Turkish government is conformable to the accounts of the most intelligent travellers who have visited that Empire. The count de Marsigli, in his treatise concerning the military state of the Turkish Empire, ch. vi. and the Author of observations on the religion, laws, government and manners of the Turks, published at London 1768, vol. i. p. 81. differ from other writers who have described the political constitution of that powerful monarchy. As they had opportunity, during their long residence in Turkey, to observe the order and justice conspicuous in several departments of administration, they seem unwilling to admit that it should be denominated a despotism. But when

the form of government in any country is repreſented to be deſpotick, this does not ſuppoſe that the power of the monarch is continually exerted in acts of violence, injuſtice and cruelty. Under governments of every ſpecies, unleſs when ſome frantick tyrant happens to hold the ſcepter, the ordinary adminiſtration muſt be conformable to the principles of juſtice, and if not active in promoting the welfare of the people, cannot certainly have their deſtruction for its object. A ſtate, in which the ſovereign poſſeſſes the abſolute command of a vaſt military force, together with the diſpoſal of an extenſive revenue; in which the people have no privileges, and no part either immediate or remote in legiſlation; in which there is no body of hereditary nobility, jealous of their own rights and diſtinctions, to ſtand as an intermediate order between the Prince and the people, cannot be diſtinguiſhed by any name but that of a deſpotiſm. The reſtraints, however, which I have mentioned, ariſing from the *Capiculy*, and from religion, are powerful. But they are not ſuch as change the nature or denomination of the government. When a deſpotick Prince employs an armed force to ſupport his authority, he commits the ſupreme power to their hands. The Prætorian bands in Rome dethroned, murdered, and exalted Princes, in the ſame wanton manner with the ſoldiery of the Porte at Conſtantinople. But notwithſtanding this, the Roman Emperors have been conſidered by all political writers as poſſeſſing deſpotick power.

NOTE XLIV. Sect. III. p. 227. [XX].

The inftitution, the difcipline, and privileges of the Janizaries are defcribed by all the authors who give any account of the Turkifh government. The manner in which enthufiafm was employed in order to infpire them with courage is thus related by Prince Cantemir: "When Amurath I. had formed them into a body, he fent them to Haji Bektafh a Turkifh Saint, famous for his miracles and prophecies, defiring him to give them a banner, to pray to God for their fuccefs, and to give them a name. The Saint, when they appeared in his prefence, put the fleeve of his gown upon one of their heads, and fays, Let them be called *Yengicheri.* Let their countenance be ever bright, their hands victorious, their fword keen; let their fpear always hang over the heads of their enemies, and wherever they go, may they return with a fhining face." Hiftory of the Ottoman Empire, p. 38. The number of Janizaries, at the firft inftitution of the body, was not confiderable. Under Solyman, in the year 1521, they amounted to twelve thoufand. Since that time their number has greatly increafed, Marfigli, Etat. &c. ch. 16. p. 68. Though Solyman poffeffed fuch abilities and authority as to reftrain this formidable body within the bounds of obedience, yet its tendency to limit the power of the Sultans was, even in that age, forefeen by fagacious obfervers. Nicolas Daulphinois, who accompanied M. D'Aramon ambaffador from Henry II. of

France to Solyman, publiſhed an account of his travels, in which he deſcribes and celebrates the diſcipline of the Janizaries, but at the ſame time predicts that they would, one day, become formidable to their maſters, and act the ſame part at Conſtantinople, as the Prætorian bands had done at Rome. Collection of Voyages from the Earl of Oxford's Library, vol. i. p. 599.

NOTE XLV. Sect. III. p. 229. [YY].

Solyman the Magnificent, to whom the Turkiſh hiſtorians have given the ſirname of *Canuni*, or inſtituter of rules, firſt brought the finances and military eſtabliſhment of the Turkiſh Empire into a regular form. He divided the military force into the *Capiculy* or ſoldiery of the Porte, which was properly the ſtanding army, and *Serratacul*y or ſoldiers appointed to guard the frontiers. The chief ſtrength of the latter conſiſted of thoſe who held Timariots and Ziams. Theſe were portions of land granted to certain perſons for life, in much the ſame manner as the military fiefs among the nations of Europe, in return for which military ſervice was performed. Solyman, in his *Canun-Namé* or book of regulations, fixed with great accuracy the extent of theſe lands in each province of his Empire, appointed the preciſe number of ſoldiers each perſon who held a Timariot or a Ziam ſhould bring into the field, and eſtabliſhed the pay which they ſhould receive while engaged in ſervice. Count Marſigli and Sir Paul Rycaut

Rycaut have given extracts from this book of regulations, and it appears, that the ordinary establishment of the Turkish army exceeded an hundred and fifty thousand men. When these are added to the soldiery of the Porte, they formed a military power which vastly exceeded what any Christian state could command. Marsigli Etat Militaire, &c. p. 136. Rycaut's state of the Ottoman Empire, book iii. ch. 2. As Solyman, during his active reign, was engaged so constantly in war, that his troops were always in the field, the *Serratacuły* became almost equal to the Janizaries themselves in discipline and valour.

It is not surprising, then, that the authors of the sixteenth century should represent the Turks as far superior to the Christians, both in the knowledge and in the practice of the art of war. Guicciardini informs us, that the Italians learned the art of fortifying towns from the Turks. Histor. lib. xv. p. 266. Busbequius, who was ambassador from Ferdinand to Solyman, and who had opportunity to observe the state both of the Christian and Turkish armies, published a discourse concerning the best manner of carrying on war against the Turks, in which he points out at great length the immense advantages which the Infidels possessed with respect to discipline, and military improvements of every kind. Busbequii opera edit. Elzevir. p. 393, &c. The testimony of other authors might be added, if the matter were, in any degree, doubtful.

 BEFORE

Before I conclude theſe Proofs and Illuſtrations, I ought to explain the reaſon of two omiſſions in them; one of which it is neceſſary to mention on my own account, the other to obviate an objection to this part of the work.

In all my inquiries and diſquiſitions concerning the progreſs of government, manners, literature and commerce during the middle ages, as well as in my delineations of the political conſtitution of the different States of Europe at the opening of the ſixteenth century, I have not once mentioned M. de Voltaire, who, in his *Eſſay ſur l'hiſtoire generale*, has reviewed the ſame period, and has treated of all theſe ſubjects. This does not proceed from inattention to the works of that extraordinary man, whoſe genius, no leſs enterprizing than univerſal, has attempted almoſt every different ſpecies of literary compoſition. In many of theſe he excels. In all, if he had left religion untouched, he is inſtructive and agreeable. But as he ſeldom imitates the example of modern hiſtorians in citing the authors from whom they derived their information, I could not, with propriety, appeal to his authority in confirmation of any doubtful or unknown fact. I have often, however, followed him as my guide in theſe reſearches; and he has not only pointed out the facts with reſpect to which it was of importance to inquire, but the concluſions which it was proper to draw from them. If he had, at the ſame time, mentioned the books which relate theſe particulars, a great part of my labour

bour would have been unneceſſary, and many of his readers who now conſider him only as an entertaining and lively writer, would find that he is a learned and well-informed hiſtorian.

As to the other omiſſion; every intelligent reader muſt have obſerved, that I have not entered, either in the hiſtorical part of this volume, or in the Proofs and Illuſtrations, into the ſame detail with reſpect to the ancient laws and cuſtoms of the Britiſh kingdoms, as concerning thoſe of the other European nations. As the capital facts with regard to the progreſs of government and manners in their own country are known to moſt of my readers, ſuch a detail appeared to me to be leſs eſſential. Such facts and obſervations, however, as were neceſſary towards completing my deſign in this part of the work, I have mentioned under the different articles which are the ſubjects of my diſquiſitions. The ſtate of government, in all the nations of Europe, having been nearly the ſame during ſeveral ages, nothing can tend more to illuſtrate the progreſs of the Engliſh conſtitution, than a careful inquiry into the laws and cuſtoms of the kingdoms on the Continent. This ſource of information has been too much neglected by the Engliſh antiquarians and lawyers. Filled with admiration of that happy conſtitution now eſtabliſhed in Great Britain, they have been more attentive to its forms and principles, than to the condition and ideas of remote times, which, in almoſt every

particular, differ from the preſent. While engaged in peruſing the laws, charters, and early hiſtorians of the continental kingdoms, I have often been led to think that an attempt to illuſtrate the progreſs of the Engliſh juriſprudence and policy, by a compariſon with thoſe of other kingdoms in a ſimilar ſituation, would be of great utility, and might throw much light on ſome points which are now obſcure, and decide others, which have been long contraverted.

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